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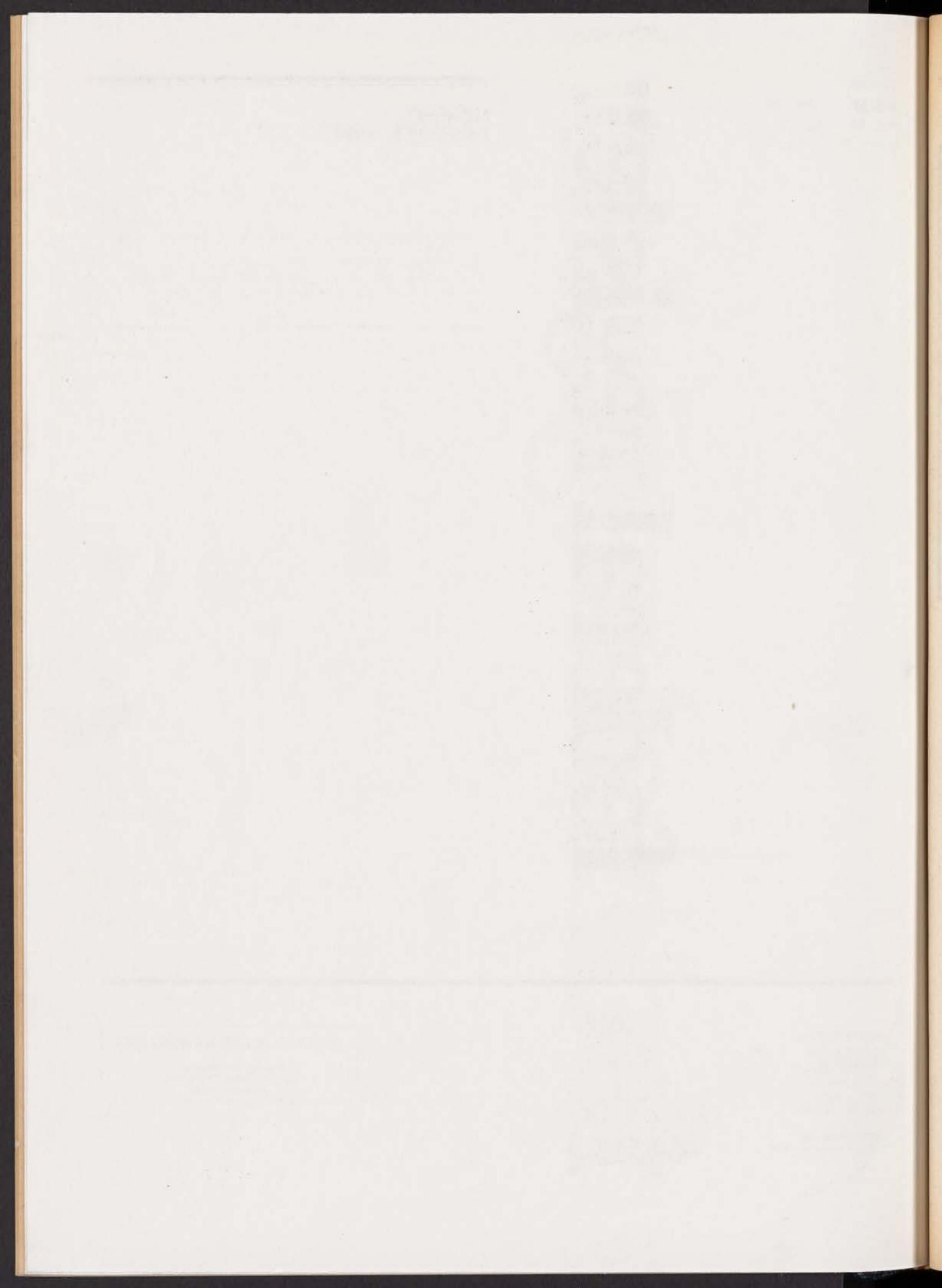
Monday
February 5, 1990

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see
announcement on the inside cover of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the **Federal Register** and Code of Federal Regulations.
- WHO:** The Office of the **Federal Register**.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the **Federal Register** system and the public's role in the development of regulations.
 2. The relationship between the **Federal Register** and Code of Federal Regulations.
 3. The important elements of typical **Federal Register** documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** February 23, at 9:00 a.m.
WHERE: Office of the **Federal Register**, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

[INS No. 1257-90]

RIN 1115-AA88

Contracts With Transportation Lines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule updates the listings of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States and carriers which have entered into agreements with the U.S. Immigration and Naturalization Service to guarantee the passage through the United States in immediate and continuous transit by aliens destined to foreign countries. It is necessary to publish and record approved transportation line contracts and to make this information available to the public to allow the transportation lines to begin the services agreed to in the contract. This rule will facilitate travel of passengers while passing through the United States.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Gene Paz, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4033.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service entered into agreements with Gulf Air, Inc. (dba TransOcean Airways) on August 10, 1989, with U.S. Air on October 31, 1989, and Midway Airlines on November 16, 1989, to provide for the preinspection of their passengers and crew as provided

by section 238(b) of the Immigration and Nationality Act; as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the traveling public.

The Commissioner further entered into agreements with Skyworld Airlines (dba Ports of Call Air) on October 17, 1988, with Y. Guahan Airways, Inc./Guam Marianas Air on December 8, 1988, with Nippon Cargo Airlines Co., Ltd. on December 30, 1988, with Pan Am Express on January 5, 1989, and Air Espana (dba Air Europa) on November 1, 1989, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

On August 5, 1988, Kuwait Airways Corporation formally requested cancellation of Form I-426, Immediate and Continuous Transit Agreement, between the United States and Kuwait Airways Corporation.

Section 238.3(b) deletes Kuwait Airways Corporation from the currently effective list of transportation lines approved to bring aliens to the United States in immediate and continuous transit.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the amendment merely updates the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that the rule will not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. This rule constitutes a notice to the public under 5 U.S.C. 552.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restrictions, Transportation lines.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR 2.

2. Section 238.3(b) is amended by removing Kuwait Airways Corporation from the listing of *Signatory lines* and by adding in alphabetical sequence the following transportation lines:

§ 238.3 [Amended]

(b) * * *

Air Espana (dba Air Europa)

Nippon Cargo Airlines Co., Ltd.

Pan Am Express

Skyworld Airlines (dba Ports of Call Air)

Y. Guahan Airways, Inc./Guam Marianas Air

3. Section 238.4 is amended by adding in alphabetical sequence the following transportation lines under the headings to read as follows:

§ 238.4 [Amended]

At Freeport

Midway Airlines

At Nassau

Midway Airlines

U.S. Air

At Shannon

Gulf Air, Inc. (dba TransOcean Airways)

Dated: December 22, 1989.

Richard E. Norton,

Associate Commissioner, Immigration and Naturalization Service.

[FR Doc. 90-2785 Filed 2-2-90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[T.D. 8286]

RIN 1545-AN74

Withholding of Tax on Nonresident Aliens**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Temporary regulation.

SUMMARY: This document contains a temporary Income Tax Regulation relating to withholding of tax on certain payments made to nonresident aliens. This temporary regulation is necessary to provide appropriate guidance with respect to withholding upon payments to a nonresident alien individual from an employees' trust described in section 401(a) of the Internal Revenue Code of 1986 (the "Code") that is exempt from tax under section 501(a) of the Code. The temporary regulation will affect both individuals and withholding agents. The text of the temporary regulation set forth in this document also serves as the text of the proposed regulation cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: Effective date: February 26, 1990. The temporary regulation applies to payments made after February 26, 1990.

FOR FURTHER INFORMATION CONTACT:

Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202-377-9059, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

This document contains a temporary Income Tax Regulation (26 CFR part 1) under section 1441 of the Code.

Need for a Temporary Regulation

Immediate guidance is necessary for withholding agents with respect to payments to which this section applies. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provision

Prior to 1987, certain deferred payments made in a year in which the taxpayer was not engaged in a U.S.

trade or business were not treated as effectively connected income even though such payments were attributable to a year in which the taxpayer was engaged in a U.S. trade or business. Section 1242(a) of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2580, added new section 864(c)(6) to the Code. Section 864(c)(6) treats certain deferred payments (including those attributable to the performance of services) made in a year in which the taxpayer is not engaged in a U.S. trade or business, but attributable to another year in which the taxpayer was so engaged in a U.S. trade or business, as effectively connected income. Pensions are treated as compensation for services under §31.3401(a)-1(e)(2). This 1986 Act change in the characterization of such deferred compensation as effectively connected income necessitates a clarification of the regulations under section 1441 to ensure appropriate withholding upon certain deferred compensation payments made to nonresident aliens. Section 1441 requires withholding of taxes on certain types of income paid to nonresident aliens; exceptions to this statutory rule are authorized for compensation for personal services only to the extent such compensation is exempt under a tax treaty or is subject to wage withholding under section 3402. Special rules with respect to withholding upon certain deferred income are contained in section 3405. Section 864(c)(6) is effective for taxable years beginning after December 31, 1986.

Section 1.1441-4T(b)(1)(ii) is added to clarify that payments made to a nonresident alien individual from any employees' trust described in section 401(a) which is exempt from tax under section 501(a) are not subject to the exception from withholding under section 1441 if an election of no withholding under section 3405 (a)(2) or (b)(3) is in effect. Accordingly, if an election of no withholding under section 3405 (a)(2) or (b)(3) is in effect, such payments are subject to withholding under section 1441.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking

for the regulations was submitted to the Administrator of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of this regulation is Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing this regulation.

List of Subjects in 26 CFR 1.1441-1 to 1.1465-1

Income taxes, Aliens, Foreign corporations.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

INCOME TAX REGULATIONS**PART 1—[AMENDED]**

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 1.1441-4 (b)(1)(ii) and 1.1441-4T also issued under 26 U.S.C. 1441 (c)(4). * * *

Par. 2. Section 1.1441-4 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 1.1441-4 Exemptions from withholding.

(b) Compensation for personal services of an individual—(1) Exemption from withholding. * * *

(ii) [Reserved] For guidance, see § 1.1441-4T(b)(1)(ii). * * *

Par. 3. A new § 1.1441-4T is added immediately after § 1.1441-4 to read as follows:

§ 1.1441-4T Exemption from withholding (Temporary regulation).

(a) [Reserved]

(b) Compensation for personal services of an individual—(1) Exemption from withholding.

(i) [Reserved]

(ii) Withholding is not required under § 1.1441-1 from salaries, wages, remuneration, or any other compensation for personal services of a nonresident alien individual if such compensation is effectively connected with the conduct of a trade or business within the United States and such compensation would be subject to withholding under section 3402 but for

the provisions of section 3401(a) (other than paragraph (a)(6) thereof) and the regulations under that section, provided that an election of no withholding under section 3405 (a)(2) or (b)(3) is not in effect.

(b)(1)(iii) through (5) [Reserved]
(c) through (i) [Reserved]

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 28, 1989.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 90-2488 Filed 2-2-90; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[T.D. ATF-293; REF. Notice Nos. 530, 665, 671]

RIN 1512-AA52

Explosive Materials in the Fireworks Industry

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR part 55 to modify certain regulations and add new sections in subpart K dealing with storage to specifically address the fireworks industry. The regulations are a result of increased concern about the number and severity of explosions which have occurred on the premises of special fireworks industry members and tests on certain stored fireworks explosive materials.

EFFECTIVE DATE: This final rule is effective March 7, 1990 except that those persons who hold licenses or permits under this part on that date shall, with respect to the premises covered by such licenses or permits, comply with the high explosives storage requirements for flash powder and bulk salutes by March 7, 1991.

FOR FURTHER INFORMATION CONTACT:
Daniel Crowley, ATF Specialist,
Firearms and Explosives Operations
Branch, Bureau of Alcohol, Tobacco,
and Firearms, (202) 789-3029.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) has become increasingly concerned about the number and severity of explosions which have occurred on the premises of special fireworks plants. Serious explosions have occurred which resulted in the

partial or complete destruction of special fireworks factories, damage to surrounding property, and in serious injuries and multiple deaths.

Summary of Proposed Regulations, Comments, and Changes to part 55

This final rule, in addition to other changes, incorporates the provisions of two fireworks related rulings, ATF Rul. 85-13, A.T.F.Q.B. 1985-3, 47, and ATF Rul. 79-8, A.T.F.Q.B. 1979-1, 27, as well as the statutory provisions of Pub. L. No. 99-308, 100 Stat. 449 (1986) relating to black powder. Some of the major provisions of this final rule are:

(1) The high explosives classification is extended to flash powder and bulk salutes for storage purposes since they can be made to detonate by means of a blasting cap when unconfined. The term "bulk salutes" means unfinished salutes and finished salutes which are segregated from other special fireworks. However, when finished salutes have been packed into shipping containers with other special fireworks, they are subject to the same storage requirements for low explosives.

(2) No more than 10 pounds of flash powder used in special fireworks may be kept outside of an approved magazine and in any one processing building or area during a day's assembling operations.

(3) No more than 500 pounds of other explosive materials may be kept outside of an approved magazine and in any one processing building or area during a day's assembling operations.

(4) The holding of no more than 10 pounds of flash powder or 500 pounds of other explosive materials used in special fireworks beyond the completion of the workday will require that the processing building or area be located in accordance with the table of distance requirements of 27 CFR 55.218.

(5) New "minimum separation of distance" tables applicable to fireworks plants, fireworks process buildings, and fireworks plant magazines are established.

(6) The recordkeeping requirements relating to the quantity and description of special fireworks are amended.

(7) The recordkeeping requirement for licensees and permittees selling or disposing of exempt quantities of black powder under the exemption for use solely for sporting, recreational, or cultural purposes in antique firearms or antique devices is eliminated.

Notice of Proposed Rulemaking

On July 20, 1988, the Bureau published a notice of proposed rulemaking, Notice No. 665, cross-referenced to Notice No. 530 (53 FR 27452) with a 60-day

comment period. The original 60-day comment period was extended an additional 30 days by Notice No. 671 (53 FR 35330).

Comments Received

During the comment period 16 written comments were received, one of which constituted a request for an extension of the initial 60-day comment period. Among the commenters were three persons involved in the regulation of fireworks, one interested party, two trade associations and nine industry members.

General

ATF acknowledged in the notice of proposed rulemaking that the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage could have an adverse economic impact on a number of fireworks industry members in that their premises would not permit the storage of high explosives in compliance with the American Table of Distances. For this reason, ATF specifically requested comments from industry members addressing the economic impact of such a reclassification.

Three commenters addressed this issue. However, the comments of two were indirect and offered limited data to aid in assessing the economic impact of the reclassification. The other commenter indicated that up to 90 percent of the industry would suffer economically but did not provide any basis for this estimate.

Definitions

Five commenters suggested that various definitions in the proposed regulations be modified or eliminated altogether. One commenter suggested that the definition of "Fireworks mixing building" be modified for clarity by removing the word "primarily" from the definition. This change was adopted.

Another commenter, citing National Fire Protection Association Standard 1124, Manufacture, Transportation and Storage of Fireworks, felt that the proposed definition of "Fireworks mixing building" should be modified to conform to the definition found in Standard 1124 which contains an exception for wet sparkler mix. Based on tests conducted by the Department of Transportation, the commenter reasoned that wet sparkler mix does not constitute an explosion hazard. We concur with this comment and have modified our definition to include an exception for preparing wet sparkler mix.

A suggestion was made by one commenter to eliminate the definition of "common fireworks." We disagree with this suggestion because the definition is necessary to distinguish between common and special fireworks.

It was further suggested that the definition of "Fireworks plant warehouse" be eliminated. This suggestion is not adopted since the definition is needed for proper identification of the various types of buildings found on fireworks plant premises.

The question was asked by one commenter whether a fireworks shipping building is subject to the 500-pound limitation applicable to fireworks process buildings as indicated by the language contained in the definition of a fireworks process building. ATF did not intend to define a fireworks shipping building as a fireworks process building and make the shipping building subject to the 500-pound limitation. However, a fireworks shipping building, when used to store finished special fireworks prior to packing into shipping containers, is a magazine subject to all the storage requirements for magazines. Accordingly, we have deleted the reference to fireworks shipping building from the definition of fireworks process building.

Another commenter requested that the definition of "screen barricade" be modified to permit the use of mesh larger than the specified maximum of $\frac{1}{2}$ inch. We did not amend this definition since the definition as written is consistent with that found in NFPA Standard 1124. Deviation from that definition could cause confusion within the industry and conflict with Federal, State or local regulatory requirements.

One comment suggested modifying the definition of "flash powder" to include the term "flash paper." We disagree with this suggestion because ATF has no authority to regulate flash paper.

One commenter requested clarification of the proper storage requirements for finished multi-effect fireworks shells which are comprised of salute and non-salute components. ATF considers such finished fireworks shells to be low explosives not requiring storage in high explosives magazines.

Subpart G—Records and Reports

It was further suggested that §§ 55.122–55.124 be amended to allow for recordkeeping entries to be in terms of "complete shows" ATF, as reflected in § 55.127, permits entries into the required records to be in terms of complete shows, provided the licensee has catalogs, brochures, etc., available

for inspection which fully disclose the contents of any complete show entered into the records as such.

Subpart K—Storage

Three commenters opposed the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage. One reason given was that the commenters have no knowledge of any accidental explosions involving flash powder or bulk salutes stored in low explosives magazines. Another reason was that, while the burn rate for flash powder averaged 750 meters per second and achieved detonation velocity for only a few microseconds, it does not sustain detonation velocity.

Prior to 1985, ATF had no empirical data on fireworks or explosive materials and pyrotechnic compositions used in the assembly of fireworks upon which to base a classification. To learn more about their properties, ATF, in conjunction with the Department of Transportation and participants from within the fireworks industry, conducted a series of tests on a variety of completed special fireworks and various explosive materials and pyrotechnic compositions typically used in the assembly of fireworks. These tests demonstrated that flash powder was a violently reactive material that does reach detonation velocity when confined. Thus, the reclassification of flash powder and bulk salutes is intended to afford the public the degree of protection prescribed for similarly violent explosive materials.

One commenter asked that the word "special" be deleted from "special fireworks" in §§ 55.201(d) and 55.202(b).

Use of the term "special fireworks" is necessary to distinguish such fireworks from finished common fireworks which are exempt from regulation under part 55.

One commenter suggested revising the text of § 55.206(d) for clarity. We concurred with this suggestion and have modified the text. Section 55.221 serves to codify the text of ATF Rul. 85-13, which imposed limits on the quantity of various explosive materials and pyrotechnic compositions permitted to be outside an approved magazine and in any one fireworks process building or area, and required that all dry explosive powders and mixtures, partially assembled special fireworks, and finished special fireworks be returned to an approved magazine at the conclusion of a day's operations. Comments received, which address this section, are discussed below.

Four commenters recommended increasing the maximum quantity of flash powder permitted in any one fireworks process building from the proposed 10-pound maximum found in § 55.221(c) to varying quantities ranging to a high of 125 pounds. The general reason given was that 10 pounds of flash powder will only permit the production of 80 salutes and is economically inefficient in practice. Given the properties of flash powder, ATF believes this 10-pound limit to be both reasonable and necessary from a public safety standpoint. Fireworks plant operators may establish more than one fireworks process building on their premises provided they are located in accordance with the table of distances found in § 55.222. Further, once a batch of flash powder has been processed into salutes, the salutes may be removed to an approved magazine and another 10-pound batch of flash powder may be brought in for processing.

Six commenters opposed the requirement of § 55.221(d) that explosive powders and mixtures and unfinished and finished special fireworks be removed from a fireworks process building to an approved magazine at the end of a day's operations.

The primary objection raised was that the probability of an accidental explosion is greatest when the materials are being transported or handled, and that the requirement for increased movement and handling would enhance the probability of an accident. An example cited was the explosion at an Oklahoma fireworks plant that was initiated while employees were transporting/handling explosive materials used in the assembly of fireworks.

The employment of proper safety practices when handling or moving explosive materials used in the assembly of fireworks will minimize any safety risks. Further, we feel that the threat to the general public posed by leaving explosive materials, pyrotechnic compositions, or unfinished and finished special fireworks unattended in the fireworks process building overnight outweighs the risks associated with increased movement and handling. Further, ATF Rul. 85-13 permits fireworks plant operators to apply for permission to keep such materials in a fireworks process building overnight, provided the fireworks process building is located in accordance with the table of distances in § 55.218. For these reasons, the comments were not adopted.

A commenter requested clarification on whether common fireworks are

permitted to be kept in fireworks process buildings in excess of the 500-pound limitation established in the tables of distances in § 55.223 and 55.224. The regulations will not preclude the storage of finished common fireworks in quantities exceeding the 500-pound net weight limitation in a fireworks process building. However, the fireworks process building used for this purpose could not be used to process new fireworks until such time as the quantity of finished common fireworks in storage drops below the 500-pound net weight limit. In other words, the combined net weight of finished common fireworks in storage and the explosive materials and pyrotechnic compositions in process in a fireworks process building cannot exceed the 500-pound net weight limitation.

Two commenters took exception to the tables of distances appearing in §§ 55.222–55.224, stating that the quantity ranges in the tables are too broad and do not take into account small quantities of explosive materials or pyrotechnic compositions and special fireworks. The tables appearing in these sections were modeled after tables found in NFPA Standard 1124. This was done for the purpose of achieving consistency among Federal and State regulatory requirements whenever possible. In this connection, States have adopted particular NFPA standards. In addition, quantities less than 50 pounds of explosive materials may be stored in indoor magazine located in buildings other than a residence.

A commenter suggested in the interest of public safety that the tables of distances proposed in §§ 55.222–55.224 should be deleted and the American Table of Distances found in § 55.218 be applied to all facets of a fireworks plant's operations. This suggestion was not adopted since the resulting economic impact of such a requirement would be unreasonable and could cause a large number of fireworks plant operators to go out-of-business.

Effective Date

ATF recognizes that the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage will have an adverse economic impact on a number of fireworks industry members. Specifically, some industry members will incur a one-time cost of upgrading or acquiring a magazine to store fireworks explosive materials. Further, certain industry members will need to relocate their plant premises, reduce capacity or purchase or lease magazines at a location other than their existing

premises to and from which their explosives material would be transported. Therefore, ATF will allow a 12-month period from the effective date of these regulations for existing industry members to comply with the high explosive storage requirements for flash powder and bulk salutes. However, existing licensees or permittees who file a new license or permit application for new or additional premises, and any new applicant desiring to enter into the fireworks business after the effective date of these regulations shall comply with the high explosive storage requirements before the application is approved.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in;

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. A final regulatory flexibility analysis has been prepared and reads as follows.

Final Regulatory Flexibility Analysis for Explosive Materials in the Fireworks Industry—Regulations (27 CFR Part 55)

Rationale for Agency Action

The law [18 U.S.C. 841–848] sets forth a Federal responsibility over the importation, manufacture, distribution, and storage of explosive materials. Regulations implementing the law contain the procedural and substantive requirements relative to, among other things, the storage of explosive materials. There has been an increase in the number and severity of explosions on the premises of special fireworks plants and ATF is particularly concerned about the safe storage of special fireworks explosive materials. The quantity and type of special fireworks explosive materials allowed to be held outside an approved storage magazine and in a building or area

during an assembly process have not been subject to specific regulations.

Objective and Legal Basis of the Proposed Rule

A. Objective basis. The objective basis of the final regulations is to extend the high explosives classification to certain special fireworks explosive materials for the purpose of storage and to establish new minimum separation of distance tables applicable to fireworks plants, fireworks process buildings, and fireworks plant storage magazines.

B. Legal basis. The legal basis for the final regulations is found in 18 U.S.C. 847. This law gives the Secretary of the Treasury broad discretion to enact rules and regulations reasonably necessary for the importation, manufacture, distribution, and safe storage of explosive materials.

Further, 18 U.S.C. 846 authorizes the Secretary to prescribe precautionary measures to prevent the recurrence of accidental explosions in which explosive materials were involved. Treasury Department Order No. 120-01 dated June 6, 1972, effective July 1, 1972 (formerly No. 221), delegated to the Bureau of Alcohol, Tobacco and Firearms the function of administering such regulations.

C. Estimate of number of small entities affected and types. It is estimated that this document will affect about 300 small entities involved in the fireworks industry.

Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements Anticipated

A. Reporting requirements. The regulations in this document will not impose reporting requirements other than those approved under OMB Docket No. 1512-0373.

B. Recordkeeping requirements. The regulations in this document will not impose recordkeeping requirements other than those approved under OMB Docket No. 1512-0373.

C. Compliance requirements. The compliance requirements of the regulations were determined by a survey conducted to determine the possible economic impact on the fireworks industry in requiring increased standards for the storage and handling of fireworks explosive materials and comments received from a notice of proposed rulemaking.

Approximately 50 percent of the 300 industry members were surveyed to arrive at projected costs in implementing the regulations and 16 comments were received.

Two types of costs to fireworks industry members were identified in implementing the regulations. A one time cost of upgrading or purchasing a magazine to store certain fireworks explosive materials would average about \$2,500, for an estimated 62 industry members for a total one time of \$155,000.

The other cost, involving an estimated 29 industry members, is more difficult to establish. These industry members have premises on which storage magazines could not comply with the American Table of Distances. Based on their current levels of operation, these industry members would need to relocate their plant premises or purchase or lease magazines at a location other than their existing premises to and from which the explosive materials would be transported. The recurring annual cost to each of these 29 industry members may be as much as \$5,000.

Conflicting, Duplicative or Overlapping Federal Rules

None of the requirements of the regulations will conflict, duplicate, or overlap other Federal rules.

Alternatives

A. Multitiering. This concept was not used because the regulations involve requirements protecting the public safety in the storage of special fireworks explosive materials applicable to all persons involved in the fireworks industry.

B. Simplification of requirements. The requirements were determined to be the minimum necessary to improve the safe storage of special fireworks explosive materials.

C. Performance standards. This concept was utilized by recognizing the economic impact on any industry member required to upgrade an existing storage facility to the standards for high explosives or to acquire a new high explosives storage magazine. ATF will allow a 12-month period from the effective date of these regulations for existing industry members to comply with the high explosives storage requirements for flash powder and bulk salutes. However, existing licensees or permittees who must file a new license or permit application for new or additional premises, or any new applicant desiring to enter into the fireworks business after the effective date of these regulations shall comply with the high explosives storage requirements before the application is approved.

D. Exemption of small entities. The law does not authorize exemption of any entity from the requirements.

Paperwork Reduction Act

The provisions of the following ATF Rulings and Procedures are either incorporated into or are obsoleted by the regulations: ATF Rul. 79-8, A.T.F.Q.B. 1979-1, 27; ATF Rul.

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no new requirement to collect information is proposed. However, consistent with the amendments made by this final rule, clarifying revisions to the examples accompanying currently approved reporting and recordkeeping requirements also are being adopted.

List of Subjects

27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Drafting Information

The principal author of this document is Lawrence G. White, formerly with the Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

Obsolete Explosive Materials Rulings

85-13, A.T.F.Q.B. 1985-3, 47; and Industry Circular 82-8, dated July 13, 1982.

Authority and Issuance

PART 55—[AMENDED]

27 CFR part 55—Commerce in Explosives is amended as follows:

Paragraph 1. The authority citation for part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.11 is amended by revising the definition of ammunition to correct a misspelled word, and adding definitions for bulk salutes, bullet-sensitive explosive materials, common fireworks, fireworks, fireworks plant, flash powder, fireworks mixing building, fireworks nonprocess building, fireworks process building, fireworks plant warehouse, fireworks shipping building, pyrotechnic compositions, salute, screen barricade, and special fireworks to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Ammunition. Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and 3/32 inch and other external burning pyrotechnic hobby fuses. The term does not include black powder.

* * * * *

Bulk salutes. Salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of special fireworks.

Bullet-sensitive explosive materials. Explosive materials that can be exploded by 150-grain M2 ball ammunition having a nominal muzzle velocity of 2700 fps (824 mps) when fired from a .30 caliber rifle at a distance of 100 ft (30.5 m), measured perpendicular. The test material is at a temperature of 70 to 75 degrees F (21 to 24 degrees C) and is placed against a 1/2 inch (12.4 mm) steel backing plate.

* * * * *

Common fireworks. Any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Common fireworks are classified as Class C explosives by the U.S. Department of Transportation (DOT). 49 CFR 173.100(r)

* * * * *

Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "common fireworks" or "special fireworks" described by U.S. Department of Transportation in 49 CFR 173.88 and 173.100.

Fireworks mixing building. Any building or area used for mixing and blending pyrotechnic compositions except wet sparkler mix.

Fireworks nonprocess building. Any office building, fireworks plant warehouse, or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

Fireworks plant. All land and buildings thereon used for or in

connection with the assembly or processing of fireworks, including warehouses used with or in connection with fireworks plant operations.

Fireworks plant warehouse. Any building or structure used exclusively for the storage of materials which are neither pyrotechnic compositions nor explosive materials used to assemble fireworks.

Fireworks Process building. Any mixing building; any building in which pyrotechnic compositions or explosive materials is pressed or otherwise prepared for finished and assembly; or any finishing or assembly building.

Fireworks shipping building. A building used for the packing of assorted special fireworks into shipping cartons for individual public displays and for the loading of packaged displays for shipment to purchasers.

Flash powder. An explosive material intended to produce an audible report and a flash of light when ignited and typically containing potassium perchlorate, sulfur or antimony sulfide, and aluminum metal.

Pyrotechnic compositions. A chemical mixture which, upon burning and without explosion, produces visible, brilliant displays, bright lights, or sounds.

Solute; An aerial shell, classified as a special firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

Screen barricade. Any barrier that will contain the embers and debris from a fire or deflagration in a process building, thus preventing propagation of fire to other buildings or areas. Such barriers shall be constructed of metal roofing, $\frac{1}{4}$ to $\frac{1}{2}$ inch (6 to 13 mm) mesh screen, or equivalent material. The barrier extends from floor level to a height such that a straight line from the top of any side wall of the donor building to the eave line of any exposed building intercepts the screen at a point not less than 5 feet (1.5 m) from the top of the screen. The top 5 feet (1.5 m) of the screen is inclined towards the donor building at an angle of 30 to 45 degrees.

Special fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits

of explosive materials for classification as "common fireworks." Special fireworks are classified as Class B explosives by the U.S. Department of Transportation. 49 CFR 173.88(d).

* * * * *

Par. 3. Section 55.26(a)(2) is revised to read as follows:

§ 55.26 Prohibited shipment, transportation, or receipt of explosive materials.

(a) * * *

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4).

* * * * *

Par. 4. Section 55.105 is amended by revising paragraph (g) to read as follows:

§ 55.105 Distributions to nonlicensees and nonpermittees.

(g) A licensee or permittee disposing of surplus stock may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a nonlicensee or nonpermittee if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4).

Par. 5. Section 55.122 is amended by revising paragraphs (b) (4) and (5) and (c) (4) and (5) and removing paragraph (f) to read as follows:

§ 55.122 Records maintained by licensed importers.

(b) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives,

number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

* * * * *

Par. 6. Section 55.123 is amended by revising paragraphs (b) (3) and (4), (c) (4) and (5) and (d) (2) and (3) and by removing paragraph (g) to read as follows:

§ 55.123 Records maintained by licensed manufacturers.

(b) * * *

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(4) Name, brand name or description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(d) * * *

(2) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(3) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 7. Section 55.124 is amended by revising paragraphs (b) (4) and (5) and (c) (4) and (5) and by removing paragraph (g) to read as follows:

§ 55.124 Records maintained by licensed dealers.

(b) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 8. Section 55.125 is amended by removing paragraph (b)(3) and paragraph (f), by revising paragraph (c) (4) and (5), and redesignating paragraph (g) as paragraph (f) to read as follows:

§ 55.125 Records maintained by licensed manufacturers—limited and permittees.

(c) *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 9. Section 55.127 is revised to read as follows:

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of the day. Quantity entries for special fireworks may be expressed as the number and size of individual special fireworks in a finished state or as the number of packaged display segments or packaged displays. Information as to the number and size of special fireworks contained

in any one packaged display segment or packaged display shall be provided to any ATF officer on request. Any discrepancy which might indicate a theft or loss of explosive materials is to be reported in accordance with § 55.30.

§ 55.130 [Removed]

Par. 10. Section 55.130 is removed.

Par. 11. Section 55.141(b) is revised to read as follows:

§ 55.141 Exemptions.

(b) *Black powder.* Except for the provisions applicable to persons required to be licensed under subpart D, this part does not apply with respect to commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16) or antique devices, as exempted from the term "destructive devices" in 18 U.S.C. 921(a)(4).

Par. 12. Section 55.201 is amended by revising paragraph (a) and adding new paragraphs (d) and (e) to read as follows:

§ 55.201 General.

(a) Section 842(j) of the Act and § 55.29 of this part require that the storage of explosive materials by any person must be in accordance with the regulations in this part. Further, section 846 of this Act authorizes regulations to prevent the recurrence of accidental explosions in which explosive materials were involved. The storage standards prescribed by this subpart confer no right or privileges to store explosive materials in a manner contrary to State or local law.

(d) The regulations set forth in §§ 55.221 through 55.224 pertain to the storage of special fireworks, pyrotechnic compositions and explosive materials used in assembling fireworks.

(e) The provisions of § 55.202(a) classifying flash powder and bulk salutes as high explosives are mandatory after March 7, 1990: *Provided*, that those persons who hold licenses or permits under this part on that date shall, with respect to the premises covered by such licenses or permits, comply with the high explosives storage requirements for flash powder and bulk salutes by March 7, 1991.

Par. 13. Section 55.202 (a) and (b) are revised to read as follows:

§ 55.202 Classes of explosive materials.

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined, (for example, dynamite, flash powders, and bulk salutes). See also § 55.201(e).

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined, (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and "special fireworks" defined as Class B explosives by U.S. Department of Transportation regulations in 49 CFR part 173, except for bulk salutes).

Par. 14. Section 55.206 is amended by revising paragraph (b) to read as follows:

§ 55.206 Location of magazines.

(b) Outdoor magazines in which low explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in § 55.219, except that the table of distances in § 55.224 shall apply to the storage of special fireworks. The distances shown in § 55.219 may not be reduced by the presence of barricades.

Par. 15. Section 55.221 is added to read as follows:

§ 55.221 Requirements for special fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks.

(a) Special fireworks, pyrotechnic compositions and explosive materials used to assemble fireworks shall be stored at all times as required by this subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

(b) No more than 500 pounds (227 kg) of pyrotechnic compositions or explosive materials are permitted at one time in any fireworks mixing building, any building or area in which the pyrotechnic compositions or explosive materials are pressed or otherwise prepared for finishing or assembly, or any finishing or assembly building. All pyrotechnic compositions or explosive materials not in immediate use will be stored in covered, non-ferrous containers.

(c) The maximum quantity of flash powder permitted in any fireworks process building is 10 pounds (4.5 kg).

(d) All dry explosive powders and mixtures, partially assembled special fireworks, and finished special fireworks shall be removed from fireworks process buildings at the conclusion of a day's operations and placed in approved magazines.

Par. 16. Sections 55.222 through 55.224 are added to read as follows:

§ 55.222 Table of distances between fireworks process buildings and between fireworks process and fireworks nonprocess buildings.

Net weight of fireworks ¹ (pounds)	Special fireworks ² (feet)	Common fireworks ³ (feet)
0-100	57	37
101-200	69	37
201-300	77	37
301-400	85	37
401-500	91	37
Above 500	Not permitted ^{4,5}	Not permitted ^{4,5}

¹ Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

² The distances in this column apply only with natural or artificial barricades. If such barricades are not used, the distances must be doubled.

³ While common fireworks in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks are subject to regulation. Thus, fireworks process buildings where common fireworks are being processed must meet these requirements.

⁴ A maximum of 500 pounds of in-process pyrotechnic compositions, either loose or in partially-assembled fireworks, is permitted in any fireworks process building. Finished special fireworks may not be stored in a fireworks process building.

⁵ A maximum of 10 pounds of flash powder, either in loose form or in assembled units, is permitted in any fireworks process building. Quantities in excess of 10 pounds must be kept in an approved magazine.

§ 55.223 Table of distances between fireworks process buildings and other specified areas.

DISTANCE FROM PASSENGER RAILWAYS, PUBLIC HIGHWAYS, FIREWORKS PLANT BUILDINGS USED TO STORE COMMON FIREWORKS, MAGAZINES AND FIREWORKS SHIPPING BUILDINGS, AND INHABITED BUILDINGS^{3,4}.

Net weight of fireworks ¹ (pounds)	Special fireworks ² (feet)	Common fireworks ³ (feet)
0-100	200	25
101-200	200	50
201-300	200	50
301-400	200	50
401-500	200	50
Above 500	Not permitted	Not permitted

¹ Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

² While common fireworks in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks are subject to regulation. Thus, fireworks process buildings where common fireworks are being processed must meet these requirements.

³ This table does not apply to the separation distances between fireworks process buildings (see

§ 55.222) and between magazines (see §§ 55.218 and 55.224).

⁴ The distances in this table apply with or without artificial or natural barricades or screen barricades. However, the use of barricades is highly recommended.

§ 55.224 Table of distances for the storage of special fireworks (except bulk salutes).

Net weight of fireworks ¹ (pounds)	Distance between magazine and inhabited building, passenger railway, or public highway ^{3,4} (feet)	Distance between magazines ² (feet)
0-1000	150	100
1001-5000	230	150
5001-10000	300	200
Above 10000	Use table § 55.218

¹ Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

² For the purposes of applying this table, the term "magazine" also includes fireworks shipping buildings for special fireworks.

³ For fireworks storage magazines in use prior to 30 days from the date of publication of the final rule in the *FEDERAL REGISTER*, the distances in this table may be halved if properly barricaded between the magazine and potential receptor sites.

⁴ This table does not apply to the storage of bulk salutes. Use table at § 55.218.

Signed: September 29, 1989.

Daniel R. Black,
Acting Director.

Approved: December 27, 1989.
Dated: December 27, 1989.

John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FIR Doc. 90-2511 Filed 2-2-90; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; partial stay of effective date for two substances.

SUMMARY: OSHA reduced exposure limits for 375 air contaminants on January 19, 1989 at 54 FR 2332. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until April 1, 1990.

DATES: These actions take effect on February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of

Public Affairs, Room N-3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On January 19, 1989 at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA stayed the September 1, 1989 start-up date of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until February 1, 1990. See 54 FR 36765, September 5, 1989; 54 FR 41244, October 6, 1989; and 54 FR 50372, December 6, 1989.

Settlement negotiations are continuing. Accordingly OSHA is extending the stay of the September 1, 1989 start-up date of the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry until April 1, 1990.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 9-83 (48 FR 35736).

Signed at Washington, DC this 30th day of January 1990.

Gerard F. Scannell,
Assistant Secretary.

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (38 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of table Z-1-A, which have identical limits listed in the Transitional Limits columns of

table Z-1-A, table Z-2 or table Z-3. The latter were issued under section 6(a) [29 U.S.C. 655(a)].

Section 1910.1000, the Transitional Limits columns of table Z-1-A, table Z-2 and table Z-3 also issued under 5 U.S.C. 553. Section 1910.1000, the Transitional Limits columns of table Z-1-A, table Z-2 and table Z-3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

§ 1910.1000 [Amended]

2. Section 1910.1000, table Z-1-A is amended by revising the Note at the end of the Table to read as follows:

Note: Pursuant to administrative stays effective September 1, 1989 and published in the Federal Register on September 5, 1989, and extended in part by notices published in the Federal Register on October 6, 1989, December 6, 1989 and on February 5, 1990 the September 1, 1989 start-up specified in 29 CFR 1910.1000(f)(2)(i) is stayed as follows:

Until April 1, 1990 for nitroglycerin and ethylene glycol dinitrate in the explosives industry; until October 1, 1989 for perchloroethylene in the drycleaning industry; until September 1, 1990 for the acetone TWA for certain "doffers" in the cellulose acetate fiber industry; and until the decision on the merits of the Eleventh Circuit Court of Appeals in the case of *Courtaulds Fibers, Inc. v. U.S. Department of Labor*, No. 89-7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the Federal Register notice of the termination of the carbon monoxide stay.

[FR Doc. 90-2579 Filed 2-2-90; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Parts 1910 and 1926

[Docket No. H-033]

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; partial response to court remand.

SUMMARY: On June 20, 1986, at 51 FR 22612, OSHA published revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite in general industry (29 CFR 1910.1001) and construction (29 CFR 1926.58). OSHA reduced the 8-hour time weighted average (TWA) permissible exposure limit (PEL) to 0.2 f/cc and adopted provisions for medical surveillance, exposure monitoring, methods of compliance, respirators and recordkeeping, among others.

On February 2, 1988, the U.S. Court of Appeals for the District of Columbia

Circuit upheld the standard in most respects but remanded the case to OSHA on several issues. *Building and Construction Trades Department v. Brock*, 838 F.2d 1258 (D.C. Cir. 1988). In partial response to the decision, on September 14, 1988, OSHA issued a short term excursion limit (STEL) for asbestos, tremolite, anthophyllite, and actinolite of 1 f/cc averaged over a sampling period of 30 minutes (53 FR 35610).

In June and July 1989, the Building and Construction Trades Department of the AFL-CIO (BCTD) and the AFL-CIO petitioned the Court to order OSHA to resolve all remand issues on the record of the 1986 rulemaking proceeding. The court, on October 30, 1989, ordered OSHA to take action on three of the remand issues by December 14, 1989 (Category I), three other issues by January 28, 1990, and the remaining issues by February 27, 1990.

OSHA issued its response on the first three remand issues on December 14, 1989 (54 FR 52024, December 20, 1989).

This document constitutes OSHA's response on the second group of remand issues. OSHA is (1) expanding its ban on workplace smoking and adding training requirements covering the availability of smoking control programs; (2) explaining how and why OSHA's respirator requirements will result in employee risk being reduced below that remaining at the PEL; and (3) adding a requirement that employers assure that employees working in or contiguous to regulated areas comprehend required warning signs, and requiring that training programs specifically instruct employees about the content and presence of signs and labels.

OSHA intends to publish a notice of proposed rulemaking by February 27, 1990, covering the third group of issues and the issue of the exemption for "small-scale, short-duration operations" deferred from the December 1989 response.

EFFECTIVE DATE: Amendments to the standard will become effective May 7, 1990.

FOR FURTHER INFORMATION CONTACT:
Mr. James Foster, OSHA, U.S.
Department of Labor, Office of Public
Affairs, Room N3647, 200 Constitution
Avenue NW., Washington, DC 20210.
Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published 5 CFR part 1320, implementing

the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983 and was revised May 10, 1988 (53 FR 16618), sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements. OSHA does not believe that the resolution of these remand issues results in any substantial change to the information collection burden which would require OMB paperwork clearance. The new provisions either do not increase paperwork or simply make explicit requirements which were implicit in the unrevised rules. Even in the latter group, the increase in information gathering burden is *de minimis*. OMB has approved information collection requests for the existing asbestos standards in accordance with the provisions of the Paperwork Reduction Act under control numbers 1218-0133 and 1218-0134.

Although the additional provisions do not impose any substantial new information gathering burden, OSHA is submitting the paperwork provisions in 29 CFR 1910.1001(j)(5)(iv)(C) and 29 CFR 1926.58(k)(4)(iii) for OMB clearance pursuant to 5 CFR part 1320, and the Paperwork Reduction Act of 1980.

II. Background

On June 17, 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction (51 FR 22612 *et seq.*, June 20, 1986). Effective July 21, 1986, the revised standards amended OSHA's previous asbestos standard issued in 1972. (On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite (51 FR 37002). The stay has been extended to November 30, 1990 (see 54 FR 30704), to enable OSHA to complete rulemaking on these non-asbestiform minerals. The partial stay continues to apply to the 1986 standards and all amendments thereto, including the amendments in this notice.)

Separate comprehensive standards for general industry and construction were issued which shared the same PEL and most ancillary requirements. The standards reduced the TWA permissible exposure limit tenfold to 0.2 fibers per cubic centimeter of air (f/cc) from the previous 2 f/cc limit. Specific provisions were added in the construction standard to cover unique hazards relating to asbestos abatement and demolition jobs.

Several major participants in the rulemaking proceeding including the AFL-CIO, the Building and Construction Trades Department ("BCTD"), and the Asbestos Information Association ("AIA"), challenged various provisions of the revised standards. On February 2, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision upholding most major challenged provisions, but remanding certain issues to OSHA for reconsideration (*BCTD, AFL-CIO v. Brock*, 838 F. 2d 1258). The Court held that where rulemaking participants had recommended regulatory provisions which, on the record, appeared to be feasible and to confer more than a *de minimis* benefit in reducing significant risk, OSHA must either adopt them, refute the evidence of feasibility or benefit, or more persuasively explain why OSHA did not adopt the provisions. The Court also ordered OSHA to clarify the regulatory text for two provisions and found one provision, a ban on spraying asbestos-containing products, unsupported by the record. In addition, OSHA's failure to adopt a STEL was ordered to be reconsidered within 60 days of the Court's mandate. In partial response, OSHA issued a STEL called an "excursion limit," of 1 f/cc measured over 30 minutes, on September 14, 1988 (53 FR 35610).

On June 10 and July 18, 1989, BCTD and the AFL-CIO petitioned the Court to enforce its remand order by ordering OSHA to resolve all remand issues on the record of the 1986 rulemaking proceeding within 7 to 60 days. The Court, in an October 30, 1989 order, divided the remand issues into three categories as follows.

With respect to three issues, the Court ordered OSHA to take action by December 14, 1989. These issues were:

(1) Formally delete the ban on the spraying of asbestos-containing materials;

(2) Clarify that periodic monitoring in the construction industry must be resumed after conditions change; and

(3) Clarify the exemption for "small-scale, short-duration operations" from the negative-pressure enclosure requirements of the construction standard to limit the exemption to work operations where it is impractical to construct an enclosure because of the configuration of the work environment.

OSHA issued its response on these issues on December 14, 1989 (54 FR 52024, December 20, 1989). In that document OSHA (1) removed the ban on the spraying of asbestos-containing materials; (2) changed the regulatory text to clarify when construction employers must resume periodic

monitoring; and (3) explained why OSHA was not amending the regulatory text to clarify the limited exemption for "small-scale, short-duration operations" in the construction industry standard, but instead would institute rulemaking on this issue.

With respect to the second group of issues, the Court ordered OSHA to complete its response on the existing record by January 28, 1990. These issues are:

(4) The possibility of further regulations governing employee smoking controls;

(5) The effectiveness levels of various respirators and OSHA's policy of requiring respirators to protect workers at only the PEL level; and

(6) The possibility of bi-lingual warnings and labels for employers with a significant number of non-English-speaking employees.

The Court stated that if OSHA determines that these issues could not be resolved on the existing record, OSHA may explain why and commence new rulemaking instead.

Finally, as to the three remaining remand issues, the Court allowed OSHA to publish rulemaking proposals no later than February 27, 1990. These issues are:

(7) The establishment of operation-specific permissible exposure limits;

(8) The extension of reporting and transfer requirements; and

(9) the expansion of the competent person requirement to all employers engaged in any kind of construction work.

This document constitutes OSHA's response on the second group of remand issues. On issue 4, OSHA is adding various smoking control provisions. It is prohibiting workplace smoking in areas where occupational exposure to asbestos takes place; expanding training to include information about available smoking cessation programs and to require the distribution of self-help smoking cessation material, and requiring that the physician's written opinion state that the employee has been advised of the combined effect of smoking and asbestos exposure in producing lung cancer. The Agency is explaining why it is not adopting AIA's additional suggestions for smoking controls.

On issue 5, OSHA is explaining how and why the provisions in the 1986 standards relating to respiratory protection will result in employee risk being reduced below that remaining solely as a result of the PEL and that the effectiveness levels of respirators are under review.

On issue 6, OSHA is adding a provision requiring that employers

assure that employees working in or contiguous to regulated areas comprehend warning signs. Employers may devise the means to assure employee comprehension, using symbols, graphics, pictographs or languages other than English. OSHA also is requiring that the training program specifically instruct employees as to the content and presence of signs and labels.

Because OSHA has considered these issues in response to the Court's remand and is adding regulatory text based on the prior rulemaking record developed after notice and comment, the Agency concludes that additional opportunity for notice and comment is impractical and unnecessary in accordance with the intent of 5 U.S.C. 553(b).

III. Summary and Explanation of the Remand Issues

Expanded Smoking-Control Regulations

In the 1986 standards, OSHA included certain smoking related requirements in response to the substantial record evidence that smoking multiplies the lung cancer risk of asbestos-exposed workers. Thus, the mandated training program must include information concerning the relationship between smoking and exposure to asbestos in producing lung cancer (§ 1910.1001(j)(5)(iii)(B); § 1926.58(k)(3)(iii)(C)), and smoking is prohibited in regulated areas (§§ 1910.1001(e)(5), 1926.58(e)(5)).

OSHA believed that this approach was consistent with the record evidence and with policy considerations of the agency. During the rulemaking, AIA suggested expanded smoking control provisions such as banning the hiring of smokers for asbestos-related work, requiring employer-provided smoking cessation programs, prohibiting worksite sale of tobacco products, and banning smoking during work hours. See 51 FR at 22700. OSHA rejected these requests for greater smoking controls. AIA petitioned for review. In its decision, the Court found record evidence showing that smoking cessation programs can reduce a significant risk and are feasible to implement. It concluded that, where there is such a *prima facie* showing of efficacy and feasibility, OSHA must justify its non-adoption of a requirement to offer smoking cessation programs and that "unarticulated 'policy considerations'" are not sufficient justification for its failure to do so. (See 838 F.2d at 1271).

OSHA notes that AIA suggested four smoking control provisions. Only one,

the suggestion that OSHA mandate employer-sponsored smoking cessation programs, was supported by evidence introduced by AIA concerning feasibility and effectiveness. The Court held that Agency justification is required only for suggestions for which there is record evidence concerning feasibility and effectiveness. Therefore, the Agency believes it is required to reconsider only the smoking-cessation program suggestions. However, because the remand order may include all suggested smoking controls, OSHA has reconsidered AIA's entire smoking control program.

OSHA believes that the response most consistent with its statutory authority, relevant policy considerations detailed below and the rulemaking record developed in support of the 1986 standards is to add regulatory provisions which will ban smoking in work areas where occupational exposure to asbestos exists; to expand the required training programs to include information concerning available smoking cessation programs and to distribute self-help smoking cessation program material; and to require that during mandated medical examinations physicians inform employees of the combined effect of asbestos and smoking in producing lung cancer.

First, OSHA is adding a provision which will prohibit smoking in all work areas where there is "occupational exposure to asbestos" because of activities in such areas. (29 CFR 1910.1001(i)(4), 1926.58(j)(3).) This is an expansion of the present smoking ban, which, as in most OSHA health standards, is confined to regulated areas where exposures are elevated. "Occupational exposure," as discussed in the preambles to the 1986 asbestos standards, means asbestos exposure which has its source in the workplace. Thus, employees who work in areas where asbestos abatement and renovation activity are ongoing may be occupationally exposed even though they do not disturb or handle asbestos. The new provision will read as follows: "The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos because of activities in that area."

OSHA is extending the former more limited smoking ban, to reduce residual risk among exposed smokers and non-smokers, based on the following record evidence and considerations. OSHA appropriately relied on studies that included smokers when it determined that workplace asbestos risk for all

workers is "significant" (638 F. 2d at 1265). The risk for smoking workers exposed to asbestos is substantially higher. (See e.g. Tr. 7/2, p. 153-156.) OSHA does not know with certainty whether banning smoking at the workplace will result in diminished total smoking consumption for asbestos workers who smoke. However, given their higher residual risk, and the suggestion that contemporaneous smoking and asbestos exposure is particularly risky, the Agency believes that even a small reduction in workplace smoking will reduce risk to smoking employees by more than a *de minimis* amount. (See e.g. Tr. 7/2, at 153-155.)

Feasibility of a workplace smoking ban is apparent from the record. Employers now are required to enforce a ban on smoking in regulated areas; expanding that ban to all areas where there is occupational exposure to asbestos raises no cost issue.

OSHA is also requiring that employers augment their training programs to offer smoking cessation self-help material, such as NIH Publication No. 89-1647, and that physicians certify that they have informed employees of the health risks of smoking and asbestos exposure during required medical examinations. These provisions are the core of AIA's suggested smoking cessation program requirement, which the court found on the record to be feasible and effective. OSHA is not adopting two other suggested features of such programs—providing incentives to participate and requiring smoking cessation activities on at least a quarterly basis—because, as explained below, the record shows such requirements do not appear to provide more than *de minimis* benefit to the affected workforce.

OSHA is providing, in non-mandatory appendices, names, addresses and brief descriptions of public health organizations which provide smoking cessation programs and materials to assist employers in complying with this requirement (§ 1910.1001, appendix I; § 1926.58, appendix J). Although the regulatory text specifically identifies NIH material as appropriate to meet the requirement for employer distribution of self-help smoking cessation material, alternative program material provided by other public health or private organizations may be substituted.

Requiring employers to offer smoking cessation self-help material and resource information is intended to reduce residual lung cancer risk by reducing the incidence of employee smoking. During the hearing on the 1986

standards, AIA's witness, John Pinney, testified that the available evidence demonstrated that most smoking cessation programs, including self-help, result in similar success rates of from 10% to 20%. The 30% success rate mentioned in the court's decision relates to people enrolled in formal quit smoking clinics over a three-year period (Tr. 7/10 at 404, 410), particularly where employer provided incentives are offered (Tr. 7/10, p. 413). Therefore, OSHA expects that providing self-help material and requiring medical advice to enhance motivation will provide substantial help to smoking employees to reduce their smoking and thus their risk from asbestos exposure.

Mr. Pinney also recommended periodic medical advice to heighten individual motivation for program participants. Therefore, OSHA also is expanding its medical surveillance program by requiring that the physician certify that he has informed the employee of the synergistic relationship between cigarette smoking and asbestos exposure in developing lung cancer; that stopping smoking will reduce lung cancer risk; and that he has advised the employee to stop smoking. During the rulemaking, Dr. Selikoff, an authority on asbestos-related disease, testified that advising employees to stop smoking would be a significant risk reduction measure (Tr. 7/2, 194).

OSHA has not adopted the other features of the recommended smoking cessation program because, on the record, they do not appear to offer more than a *de minimis* benefit. Mr. Pinney testified that an ideal program would provide activities on at least a quarterly basis, and provide monetary incentives to participate. However, the largest group of asbestos-exposed workers do not work in manufacturing workplaces which lend themselves to these features. Rather they work in highly transient, mobile construction worksites, or in brake repair facilities, such as gas stations, with small employee populations and high turnovers not amenable to large scale programs with frequently scheduled activities and awards. The success of these features has been demonstrated only in limited production facilities. Mr. Pinney acknowledged that there "has not been an effort to modify these principles to apply them to a mobile type of setting" (Tr. 7/10, p. 414). Therefore OSHA believes there is inadequate evidence that adopting these additional provisions would result in more than a *de minimis* benefit to most asbestos-exposed employees.

The other provisions urged by AIA—banning the workplace sale of tobacco products, and banning the hiring of asbestos workers who are smokers—have been reevaluated by OSHA in the context of the remand order. The Agency has determined not to adopt these provisions based on policy considerations and the lack of evidence concerning their feasibility and effectiveness.

The policy considerations are paramount. Adopting a ban on hiring smokers would circumvent the statutory goal of providing safe workplaces by instead restricting the workplace to "safe" workers. It could also promote intrusive employer surveillance of employees' personal lives.

As noted by the Court, OSHA has mandated "special treatment" of workers with higher risk factors in two regulatory contexts (838 F. 2d at 1272). However, these regulations, unlike a ban on hiring smokers, do not protect workers solely by excluding them from the workplace. The employer must first attempt a "workplace" solution to reducing the susceptible employee's risk. Thus, were employers required to remove workers unable to wear respirators, the need for respirator use must be premised on a showing that the employer cannot institute feasible engineering and work practice controls. The number of employees who cannot be fitted with any respirator has been shown to be minimal, and the employer must first offer available alternative employment. (See e.g. 29 CFR 1910.1001(g)(3)(iv)).

The other regulatory provision cited by the court as mandating "special treatment" for susceptible workers requires that "workers trim their beards to allow a good face-seal when using respirators". See 29 CFR 1910.134(e)(5)(i). OSHA notes that this is not really comparable to regulating the off site practice of some workers to smoke, because the presence of facial hair directly affects the workplace exposure of employees by interfering with the face to facepiece seal.

Also as a matter of policy, OSHA is reluctant to reduce workplace risks by prescribing extra-workplace lifestyles or behaviors. This policy is based on the following considerations. The issue of extra-workplace factors which interact with workplace conditions to increase workplace risk is not confined to smoking and asbestos. For example, dietary patterns affect the incidence of coronary disease which affects workplace performance and may result in sudden coronary events at the workplace, and pregnancy may increase

the risk to both mother and child from otherwise benign workplace factors.

Although the interaction between asbestos exposure and smoking is significant, it is evident that "lifestyle" choices by workers increase their workplace risk in many other situations as well. The Agency believes that it is authorized to regulate the employees' personal behavior at the worksite when worksite risks are elevated, even where that risk may be aggravated by extra-workplace behavior (see e.g. *Forging Industry Assn. v. Department of Labor* 773 F. 2d 1436 (4th Cir., 1985)). However, OSHA believes that it is not authorized to regulate personal behavior off the worksite, even when the risk of such behavior interacts synergistically with workplace risks. Further, the Agency is also concerned that by claiming a broader public health role in regulating lifestyle issues, it may be entering areas where it has limited expertise. OSHA also notes that in no other standard is an employer required to provide behavior modification programs where conduct is not work-related. The Agency also believes it should deploy its limited resources at correcting workplace hazards caused by workplace-based factors at this time as an exercise of its priority-setting authority pursuant to section 6(g) of the Act.

The Agency also rejects AIA's recommendation to ban the sale of tobacco products at asbestos worksites. First, no evidence of efficacy or feasibility was submitted. Therefore, OSHA does not believe it must defend its failure to adopt the recommendation. Second, the most significant source of future asbestos employment, asbestos abatement work, is primarily performed by contractors working at premises which they do not control. OSHA does not believe it is administratively feasible to enforce a ban on tobacco sales in these circumstances. Another significant source of asbestos related employment, brake repair, is frequently performed at service stations. Public access to stations may create demand for on-site tobacco sales. Thus a ban of on-site sales may interfere with the employer's economic activity in selling to the public. Since much brake repair work is intermittent and the sales area is separated from the repair area, a sales ban for the entire station would be difficult to enforce because it may apply only while the repair work is underway and may not apply to a separate sale area. Further, OSHA believes that any benefit to employees from such a ban is highly speculative, and appears to be *de minimis*. The policy considerations relevant to a ban on the employment of

smokers also apply to a ban on the sale of tobacco products when the use of such products extends outside the workplace. Therefore OSHA has determined, based on these considerations, that it is neither necessary nor appropriate to adopt a ban on the workplace sale of tobacco products.

Respirator Policy

In the 1986 asbestos standards, OSHA reaffirmed its traditional policy of preferring engineering and work practice controls to respirators to control employee exposure. The issue of whether OSHA should change this policy to allow the employer to rely on respirators was specifically raised and rejected by the Agency based on "overwhelming record support" for OSHA's traditional policy. See 51 FR at 22692 *et seq.* Thus, in the standards, employers first must attempt to reduce exposures by installing engineering controls and instituting work practices. Only when the preferred methods are infeasible, not yet installed, or insufficient to meet the permissible limits, or in situations where estimated exposures are uncertain, does OSHA require respirator use. Respirator use is not required in other situations when engineering and work practice controls reduce exposure to or below the PELs even though exposure to the PELs still presents a risk to employees which is not insignificant. The PELs were chosen based on the technological limitations of engineering and work practice controls, and the limitations of the available monitoring technology.

OSHA also requires employers to select required respirators from a class rated by its "protection factor" as able to protect employees at the ambient exposures to which they will be exposed. (See 29 CFR § 1910.1001(g)(2)(i); 1926.58(h)(2)(i).) The ratings are expressed as multiples of the PEL; thus a respirator with an assigned protection factor of 10, is rated as able to protect employees in environments up to 2 f/cc, ten times the PEL of 0.2 f/cc.

BCTD challenged two aspects of OSHA's respirator requirements. It objected to OSHA's supplemental respirator policy as allowing "the use of any respirator that can protect employees to the degree that they would be protected at 0.2 f/cc," "rather than mandating the use of the most protective respirator feasible". As to this claim, OSHA responded that the most protective respirator, i.e. a supplied-air respirator, had safety hazards of its own and therefore should not be mandated in every case. Secondly, BCTD objected to

the protection factors assigned by OSHA to various respirator classes, contending they are contrary to the record evidence (BCTD Br. at 49). OSHA responded that it used protection factors common to other standards and that the asbestos record did not provide "sufficient evidence to warrant changing this uniform approach at this time." It further noted that the Agency was undertaking a review of its general respirator standard (29 CFR 1910.134, see 51 FR 38593); that questions concerning effectiveness levels for respirator classes would be considered during that rulemaking; and if appropriate, conforming changes would be made to the asbestos standards (Secty's Br. at 85).

The Court found that OSHA's judgment about supplied air respirators was properly within the Agency's discretion. However, the Court was troubled by the fact that OSHA's respirator requirements appeared to require only that the combined effect of engineering and work practice controls and respirators limit exposure to the PEL, where that limit was based on the technological limitations of engineering and work practice controls and where "the PEL is conceded to leave a significant health risk * * *" (838 F.2d at 1274, emphasis added). The Court ordered OSHA to explicitly justify this policy. In addition, the Court ordered OSHA to complete its review of the general respirator standard, and "integrate" its results with the asbestos standards "without undue delay" (838 F.2d at 1275).

OSHA's response to the order is as follows. OSHA reaffirms its previous position concerning effectiveness levels. However, the Agency is expanding its explanation to demonstrate the correctness of its decision, and the limitations of the protection factor concept itself.

BCTD claimed that certain studies in the rulemaking record demonstrated that the performance of half-mask negative pressure respirators in actual use does not warrant OSHA's assigned protection factor of 10. OSHA, however, determined that these studies were flawed, and thus were an "insufficient basis" to change its historical protection factor assignment of 10. The flaws are serious. OSHA's review of the 1976 early workplace study cited by BCTD (Ex. 208), showed that the probe placement was incorrect, and so virtually guaranteed high and unrepresentative in-mask measurements. Further, the study was conducted on a workforce which received little or no regular fit-testing.

Thus, reported low protection factors in that study do not appear to be the result of the inherent capability of that respirator type, but more likely reflect flawed experimental design, and/or poorly fitting masks. Similar defects make the results of the other studies cited by BCTD unreliable and thus inadequate to use as a basis for setting protection factors.

These studies help illustrate, as explained more fully below, why OSHA regards protection factors as indicating performance capabilities of various respirator types only if they are used correctly, fitted carefully and maintained according to regulatory requirements.

BCTD also objected to the fact that OSHA assigned a protection factor of 100 to all powered air-purifying respirators (PAPRs). OSHA noted that a NIOSH recommendation for a lower rating is not binding (Br. at 85). OSHA further notes that NIOSH is also planning to review its recommendations in a rulemaking revising its respirator approval criteria. NIOSH's most recent public recommendations concerning PAPRs assigned a protection factor of 25 to loose fitting PAPRs and 50 to tight fitting PAPRs (See 10 DHHS (NIOSH) Publication No. 87-116, at 211). Thus, NIOSH recommends protection factors which are lower than the 100 which OSHA assigned. OSHA does not believe, however, that these differences in assigned protection factors would significantly affect risk in actual asbestos workplaces. This is because there are few, if any, asbestos workplaces where a PAPR is likely to be selected, with exposures between 25 times the PEL and 100 times the PEL, i.e., between 5 fibers and 20 fibers per cc. Therefore, OSHA believes that adjusting the protection factor for PAPRs to 25 to agree with a NIOSH recommendation would have no real effect on workplace risk.

OSHA notes that it is still planning to revise and update its general respirator standard. For the reasons discussed above, it believes that continuing to enforce the current asbestos respirator requirements during this interim period will not expose employees to unnecessary risk. In sum, OSHA believes its protection factor assignments properly reflected the record, are consistent with OSHA's other standards, and if applied as part of an entire respirator program offer effective protection to respirator wearing employees.

With respect to the other respirator issue, i.e., tying supplemental respirator protection to meeting the PEL, OSHA

concluded that the result of implementing the entire required respirator program would result in reducing exposures below the PEL. This means that risk would be reduced below that estimated at the PEL, using any respirator type approved in the standards. This finding was based on the following considerations: OSHA's predictions of relatively low ambient concentrations of asbestos after feasible engineering, work practice and housekeeping controls would be instituted; OSHA's revised and tightened respirator requirements which require more protective respirator types, require individual fit testing and PAPRs on employee request; Agency assessment that compliance with the standards' entire respirator program would ensure adequate respirator usage and fit; and provisions unique to asbestos to encourage the use of respirator types rated as more protective.

OSHA predicted that most operations, after engineering, work practice and housekeeping controls were instituted would not expose employees to above 0.2 f/cc, the PEL. However, where controls would not reduce exposures to the PEL, ambient exposure concentrations remaining in most such operations would be 0.5 f/cc or less measured over an 8-hour shift. For example, see 51 FR at 22665, tables 22 and 23. In these operations, respirators must supplement other controls. The permitted type of respirator rated as least protective, i.e., a half mask with a high efficiency filter, is rated as having a protection factor of 10. This means that it is expected to filter out at least 90% of the ambient concentration if properly fitted and worn. The remaining concentration (less than 10%) would leak into the mask through gaps between the wearer's face and the respirator. Since the standards require high efficiency filters, virtually no fibers will penetrate the filter itself. When a half mask respirator is used in maximum asbestos concentrations of up to 0.5 f/cc, the in-mask concentration under optimum fitting conditions may be not more than 0.05 f/cc, well below the PEL. Thus in most anticipated situations use of the "lowest" ranking respirator type was expected to reduce actual exposures below the PELs when respirators fit, and are maintained and worn properly.

OSHA has also required that upon an employee's request, the employer provide a respirator type rated more protective, i.e., a PAPR with an expected protection factor of 100. 29 CFR 1910.1001(g)(2)(ii), and 1926.58(h)(2)(iii).

Further, in abatement and renovation work, where expected ambient concentrations are variable, additional provisions encourage and require supplemental respirator use without regard to exposure levels. Thus in major abatement jobs, incentives to use the most protective class of respirators, supplied air respirators operated in the positive-pressure mode, are provided by exempting employers who provide such respirators from the obligation to monitor exposures daily for construction employees working within regulated areas. 29 CFR 1926.58(f)(3).

Additionally, in small scale, short term abatement and renovation operations, where glove bags are used, respirators must be worn by employees removing asbestos regardless of actual exposures measured in the workplace. 29 CFR 1926.58, app. G.

OSHA believes therefore that its supplemental respirator use requirements will result in employee exposure below the PELs, where employers comply with all respirator program provisions.

Further, unlike engineering and work practice controls, the record does not contain evidence that the performance of respirators can now be reliably evaluated by measuring in-mask concentrations and OSHA has declined to set respirator requirements on this basis. Therefore, the respirator selection and use requirements in the standards attempt to cover most aspects of reliable respirator use including selection, fit testing, maintenance, and comfort without reference to numerical performance levels.

Thus although the respirator selection tables in the standards rate respirator classes in terms of their estimated capability to meet certain multiples of the PEL, the tables only start the employer's selection process, not end it. Thus, OSHA additionally requires, not only that the respirator chosen be of an appropriate class, *i.e.*, may be used in the concentrations set out in Table I, but also that it be certified for use by MSHA/NIOSH, and that the individual user be personally fit-tested to account for individual variations in fit, and thus face-seal. Decreasing the inevitable discomfort of respirator wear, and thereby avoiding the temptation to loosen strap tension or remove the respirator for "relief," is provided for, as noted above, by requiring the employer to provide a PAPR for employees who ask for one, instead of a half-mask respirator otherwise indicated as appropriate. The relative rankings of respirator effectiveness are crude guidelines which set a floor for

respirator selection, which other requirements amplify.

OSHA wished to retain flexibility to choose among a variety of respirator types to achieve optimum protection for two reasons. It did not prescribe the use of respirator types based only on their protection factor ratings, for at this time that rating may be uncertain in actual use. Further any numerical rating now available is only a partial indicator of respirator suitability for a job. For example, OSHA has assigned a protection factor of 50 to full facepiece air-purifying respirators equipped with high efficiency filters, and a protection factor of 10 to a half-mask non-disposable air-purifying respirators equipped with high-efficiency filters. Although the nominal protective edge for the full-facepiece respirator is five times greater than for the half-facepiece respirator, OSHA's experience indicates that the half-facepiece respirator is more comfortable, and that the full facepiece mask can impair vision and contribute to heat stress. None of these factors are reflected in the current numerical ratings. Therefore, the Agency is reluctant to require always that the full facepiece type be used, because the Agency's experience indicates that it will not always be more protective. Similar concerns exist relative to all respirator types. The class rated as most protective, a supplied air type, was acknowledged in the Court's decision to create safety hazards which justified the Agency's decision to allow other respirator types which are free from such concerns.

To provide additional protection, OSHA deleted from allowable respirator types in the asbestos standards respirator types which did not meet extraordinary performance criteria. Thus, OSHA has limited the flexibility to choose among respirator types by excluding some respirator types which are simply not good enough to protect against asbestos. Thus, dust, mist, and fume filters previously allowed for asbestos exposure, although they are recognized as appropriate against other toxic substances, are prohibited in the 1986 standards. OSHA believed that the high toxicity of asbestos requires that only high efficiency filters can be safely used by workers when using negative pressure respirators which depend on filtration. Furthermore, disposable respirators which are often allowed to be used in other OSHA standards are prohibited for use by asbestos exposed workers. OSHA believed that these respirators were not suitable because of the apparent fitting problems. Thus, OSHA has eliminated from possible use

against asbestos, entire respirator classes which the agency believes do not perform well enough to reliably protect employees against a highly toxic contaminant such as asbestos.

OSHA believes that its respirator program requirements, discussed above, properly reflect the record of its rulemaking which specifically explored respirator design defects and program deficiencies. In addition to the problematic nature of respirator use, reliance on engineering and work practice controls for asbestos is preferable because they measurably reduce exposures of employees directly involved in asbestos producing operations, reduce or eliminate bystander exposures, avoid the deposit of asbestos dust on work surfaces and employee clothing which results in further exposures, and include methods of controls such as substitution, or fully bonded asbestos-containing-materials which will eliminate or reduce future asbestos exposures.

The balance in the asbestos standard was struck therefore to rely on respirators where the preferred control systems would be insufficient, but not to elevate reliance on respiratory protection to a level of performance which can neither be measured nor reliably achieved. Therefore OSHA did not mandate respirator choice in this standard based primarily on numerical protection factors. As stated above, at this time the numbers themselves are inconclusive, the rankings are only partial indicators of respirator effectiveness, and perhaps most importantly, the rankings now used emphasize a theoretical level of respirator performance.

OSHA believes that this approach is rational and that employees required to wear respirators for supplemental protection will first benefit from all feasible engineering and work practice controls. It is intended to enhance reliance on favored control strategies such as engineering controls, work practices and housekeeping.

Bi-Lingual Signs and Labels

In the 1986 standards, OSHA prescribed a comprehensive hazard communication program including formal training, labeling asbestos-containing products, and erecting signs demarcating regulated areas where exposures exceed the PEL and, in construction, where negative pressure enclosures are erected for major abatement and renovation jobs. The training program which is required to be conducted in a manner which the employee is able to understand."

includes conveying to each employee information concerning the quantity, location, manner of use, release and storage of asbestos; the health effects connected with asbestos exposure; and a review of this standard. 29 CFR 1910.1001(j)(5); 1926.58(k)(3). Neither warning signs nor labels were required to be in languages other than English. 51 FR 22724. BTCD had argued that failure to require warnings in languages other than English is insufficiently protective of non-English-speaking employees and that OSHA should require signs and labels "bilingual in the languages that predominate in the workforce area." The Court found that:

It seems obvious that a warning sign or label in English will only rarely warn or educate non-English-speaking workers. The number of such workers in the construction industry is significant *** Section (6)(b)(5) directs the agency to provide for all workers" (838 F. at 1277).

Therefore it ordered OSHA to reconsider its determination not to require signs and labels to be in languages other than English.

OSHA's response is as follows. After reconsideration of the rulemaking record, the Agency is adding a new element to its training program specifically covering the content and placement of warning labels and signs, and a new requirement that the employer assure that employees comprehend warning signs required in regulated areas. Such understanding may be obtained by utilizing English, if workers are trained accordingly, or by other means, such as utilizing universal symbols, graphics, or foreign languages. However, OSHA is not requiring similar assurances for warning labels.

OSHA is not specifically mandating that warning signs and labels be in languages other than English, because the Agency has determined that the benefit of such a specific requirement is unproven, that it raises policy issues for the agency that go beyond this standard, and that OSHA's entire hazard communication program for asbestos, as amended, will ensure that all exposed employees are effectively warned of the presence and hazards of asbestos-containing materials on worksites.

The first new provision will add regulatory text as paragraph (j)(5)(iii)(J) of the general industry standard and paragraph (k)(3)(iii)(J) of the construction standard, by adding a new element for inclusion in training programs. Thus, employers must inform employees of "the requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels." Training must cover

the location, posting, and contents of mandated labels and signs. OSHA intends that employees be shown actual signs and labels and review their contents during training. Non-English speaking employees thereby will be familiarized with the wording of signs and labels and the significance of those legends. OSHA believes that the additional training component will assure the comprehension by all employees of written warnings which are applied or posted to hazardous products and locations.

Relying on the training component of hazard communication programs to ensure knowledge and comprehension of written warnings has been OSHA's regulatory approach in the two generic hazard communication standards it has promulgated—the generic hazard communication rules covering health related hazards, 29 CFR 1910.1200, and the control of hazardous energy source rule, also known as lockout/tagout, 29 CFR 1910.147. In the lockout/tagout rule, OSHA allows machinery to be tagged in certain limited circumstances to prevent the release of hazardous energy, when maintenance and servicing are performed. Although the dangers of non-comprehension by employees are immediate and can be deadly, OSHA does not require foreign language tagout legends, but relies instead on training programs to underscore the meaning of tag messages, and requires that tags be "understandable" by all affected employees. 29 CFR 1910.147(c)(7). The generic health hazard communication standard similarly relies on training as the major medium of employee instruction as to hazards. As noted in the Agency's earlier response, OSHA allows the addition of foreign language legends to English language signs and labels, if the employer believes comprehension will thereby be improved.

OSHA has also added a requirement that the employer assure that warning signs required for regulated areas bear legends which are understandable to employees working in and contiguous to such posted areas. 29 CFR 1910.1001(j)(1)(iv); 1926.58(k)(1)(iv). OSHA will not require that such signs be in a foreign language, but employers must assure comprehension by all affected employees including non-English speaking ones. To convey the meaning of all elements of the required legend, the employer may use symbols, graphics, pictographs or languages used by affected employees, or any other proven means of communication. Posting regulated areas warns two employee groups, those working within the area who undergo training, and

those who work in the vicinity of regulated areas, who may not receive asbestos training. The second group is at risk of significant asbestos exposure if they cannot understand the signs which demarcate the potential high-exposure area.

Protection of bystander employees has acquired special meaning in asbestos work, because of the historical record of significant disease and death suffered by employees who themselves did not handle asbestos, but who worked in the vicinity of those who did (See 51 FR at 22711, 1). Therefore, OSHA has tried to reduce the risk for bystander employees where feasible. The provisions added are intended to protect both groups.

As noted above OSHA has not added regulatory provisions which require foreign language legends or symbols on warning labels. OSHA believes that because labeling of asbestos products is done by the manufacturer, the appropriate language for any downstream work force is unknown. Employees who work with asbestos products are required to undergo training if their exposure will be significant, and those who work in areas where exposures will exceed the PEL must be trained and also warned by signs.

Thus, although employers may attach foreign language and symbolic legends to product and waste material labels, OSHA does not believe the incremental benefits of such a requirement compels its adoption.

One policy concern of the Agency should be noted. Requiring foreign language warnings in the asbestos standard would constitute the first departmental requirement of this nature. Many departmental requirements across agency lines involve the communication of hazards, dangers, risks, and benefits to immigrant or foreign language work forces. The Agency believes that the issue of requiring the public to utilize foreign languages should only be addressed after a broader airing of the concerns about such an approach. The Agency believes that the approach taken in this standard, relying on performance objectives to assure comprehension of warnings, because it does not raise these policy concerns and because OSHA believes it is effective, is the most appropriate approach to conveying asbestos warnings to affected employees.

IV. State Plan Applicability

Twenty-five states and U.S. territories have their own OSHA-approved occupational safety and health plans.

These states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Those states and territories are to adopt a standard comparable to that of OSHA's within six months of the effective date of the Federal rule.

List of Subjects

29 CFR Part 1910

Asbestos, Cancer, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

29 CFR Part 1926

Asbestos, Cancer, Construction industry, Hazardous materials, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

V. Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), 29 CFR part 1911 and Secretary of Labor's Order No. 9-83 (48 FR 35736), 29 CFR parts 1910 and 1926 are hereby amended as set forth below.

Signed at Washington, DC, this 29th day of January, 1990.

Gerard F. Scannell,
Assistant Secretary of Labor.

Amended Standards

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41

FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits column of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Z-3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z-1-A, Z-2 and Z-3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust and formaldehyde listings.

Section 1910.1001 also issued under sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. Section 1910.1001 is hereby amended by adding new paragraphs (i)(4), (j)(1)(iv), (j)(5)(iii)(I), (j)(5)(iii)(J), (j)(5)(iv)(C), (l)(7)(i)(D), and (o)(4), and new appendix I, and by revising paragraph (p)(2), to read as follows:

§ 1910.1001 Asbestos, tremolite, anthophyllite, and actinolite.

(i) * * *

(4) Smoking in work areas. The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos because of activities in that work area.

(j) * * *

(1) * * *

(iv) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (j)(1)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

* * *

(5) * * *

(iii) * * *

(I) The names, addresses and phone numbers of public health organizations which provide information, materials, and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations

contained in Appendix I, to comply with this requirement.

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

(iv) * * *

(C) The employer shall inform all employees concerning the availability of self-help smoking cessation program material. Upon employee request, the employer shall distribute such material, consisting of NIH Publication No. 89-1647, or equivalent self-help material, which is approved or published by a public health organization listed in appendix I.

* * * *

(l) * * *

(7)(i) * * *

(D) A statement that the employee has been informed by the physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

* * * *

(o) * * *

(4) Compliance date. The requirements of paragraphs (i)(4), (j)(1)(iv), (j)(5)(iii)(I), (j)(5)(iii)(J), (j)(5)(iv)(C), and (l)(7)(i)(D) shall be complied with by May 7, 1990.

(p) * * *

(2) Appendices B, F, G, H, and I to this section are informational and are not intended to create any additional obligation not otherwise imposed or to detract from any existing obligation.

Appendix I to § 1910.1001—Smoking Cessation Program Information For Asbestos, Tremolite, Anthophyllite and Actinolite—Non-Mandatory

The following organizations provide smoking cessation information and program material.

1. The National Cancer Institute operates a toll-free Cancer Information Service (CIS) with trained personnel to help you. Call 1-800-4-CANCER* to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31, Room 10A24, Bethesda, Maryland 20892.

2. American Cancer Society, 3340 Peachtree Road, NE, Atlanta, Georgia 30062, (404) 320-3333

The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational materials, ACS helps people learn about the health hazards of smoking and become successful ex-smokers.

3. American Heart Association, 7320 Greenville Avenue, Dallas, Texas 75231, (214) 750-5300

The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 state and regional groups. AHA produces a variety of publications and audiovisual materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

4. American Lung Association, 1740 Broadway, New York, New York 10019, (212) 245-8000

A voluntary organization of 7,500 members (physicians, nurses, and laypersons), the American Lung Association (ALA) conducts numerous public information programs about the health effect of smoking. ALA has 59 state and 85 local units. The organization actively supports legislation and information campaigns for non-smokers' rights and provides help for smokers who want to quit, for example, through "Freedom From Smoking," a self-help smoking cessation program.

5. Office on Smoking and Health, U.S. Department of Health and Human Services, 5600 Fishers Lane, Park Building, Room 110, Rockville, Maryland 20857

The Office on Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-related topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

* In Hawaii, on Oahu call 524-1234 (call collect from neighboring islands).

Spanish-speaking staff members are available during daytime hours to callers from the following areas: California, Florida, Georgia, Illinois, New Jersey (area code 210), New York, and Texas. Consult your local telephone directory for listings of local chapters.

PART 1926—[AMENDED]

Subpart D—[Amended]

3. The authority citation for subpart D of 29 CFR part 1926 continues to read as follows:

Authority: Secs. 4, 6, 8 Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 107 Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable. Sec. 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

4. Section 1926.58 is hereby amended by adding new paragraphs (j)(3), (k)(1)(iv), (k)(3)(iii)(I), (k)(3)(iii)(J), (k)(4)(iii), (m)(4)(i)(D) and (o)(3), and appendix J, and by revising paragraph (p)(2), to read as follows:

§ 1926.58 Asbestos, tremolite, anthophyllite, and actinolite.

(j) * * *

(3) *Smoking in work areas.* The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos because of activities in that work area.

(k)(1) * * *

(iv) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (k)(1)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

(3) * * *

(ii) * * *

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in appendix J, to comply with this requirement.

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

(4) * * *

(iii) The employer shall inform all employees concerning the availability of self-help smoking cessation program material. Upon employee request, the employer shall distribute such material, consisting of NIH Publication No. 89-1647, or equivalent self-help material, which is approved or published by a public health organization listed in appendix J.

(m) * * *

(4) * * *

(i) * * *

(D) A statement that the employee has been informed by the physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

(o) * * *

(3) The requirements of paragraphs (j)(3), (k)(1)(iv), (k)(3)(iii)(I), (k)(3)(iii)(J), (k)(4)(iii), and (m)(4)(i)(D) shall be complied with by May 7, 1990.

(p) * * *

(2) Appendices B, F, G, H, I and J to this section are informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

Appendix J to § 1926.58—Smoking Cessation Program Information for Asbestos, Tremolite, Anthophyllite and Actionlite—Non-Mandatory.

The following organizations provide smoking cessation information.

1. The National Cancer Institute operates a toll-free Cancer Information Service (CIS) with trained personnel to help you. Call 1-800-4-CANCER* to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31 Room 10A24, Bethesda, Maryland 20892.

2. American Cancer Society, 3340 Peachtree Road, N.E., Atlanta, Georgia 30026, (404) 320-3333

The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational materials, ACS helps people learn about the health hazards of smoking and become successful ex-smokers.

3. American Heart Association, 7320 Greenville Avenue, Dallas, Texas 75231, (214) 750-5300

The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 state and regional groups. AHA produces a variety of publications and audiovisual materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

4. American Lung Association, 1740 Broadway, New York, New York 10019, (212) 245-8000

A voluntary organization of 7,500 members (physicians, nurses, and laypersons), the American Lung Association (ALA) conducts numerous public information programs about the health effects of smoking. ALA has 59 state and 85 local units. The organization actively supports legislation and information campaigns for non-smokers' rights and provides help for smokers who want to quit, for example, through "Freedom From Smoking," a self-help smoking cessation program.

5. Office on Smoking and Health, U.S. Department of Health and Human Services, 5600 Fishers Lane, Park Building, Room 110, Rockville, Maryland 20857

The Office on Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-related topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

* In Hawaii, on Oahu call 524-1234 (call collect from neighboring islands).

Spanish-speaking staff members are available during daytime hours to callers from the following areas: California, Florida, Georgia, Illinois, New Jersey (area code 210), New York, and Texas. Consult your local telephone directory for listings of local chapters.

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 946****Virginia Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments: (1) Clarify that certain decisions of the regulatory authority are appealable under the Virginia Administrative Procedure Act. (2) establish a process whereby persons who have forfeited performance bond may regain eligibility to obtain new permits. (3) revise the definitions of fragile and historic lands. (4) provide for the protection of historic resources. (5) modify the revegetation success standards for forestland, and (6) propose to classify commercial forestry as a postmining land use for which a variance from the requirement to restore to approximate original contour may be granted. The last proposal is being disapproved in this rulemaking. The other amendments revise the State program to clarify ambiguities, reflect research results and provide consistency with the corresponding Federal regulations.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT:

Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Submission of Amendments
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's

findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, *Federal Register* (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15 and 946.16.

II. Submission of Amendments

By letter dated April 6, 1988 (Administrative Record No. VA-680), Virginia submitted several proposed amendments to its permanent regulatory program. OSM announced their receipt and invited public comment in the May 24, 1988, *Federal Register* (53 FR 18577-18578). Following review of this submission and the comments received, OSM informed Virginia by letter dated August 9, 1988 (Administrative Record No. VA-699), that certain of the proposed amendments could not be approved as submitted because they were either less stringent than SMCRA or less effective than the Federal regulations. By letter dated September 14, 1988 (Administrative Record VA-705), Virginia responded with corrections and clarifications. OSM announced receipt of the revisions and reopened the public comment period in the October 24, 1988, *Federal Register* (53 FR 42974-42975). A summary of the comments received and their disposition appears in part IV of this notice. Since no one requested an opportunity to testify at either of the public hearings scheduled during the public comment periods, the hearings were canceled.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Virginia program.

1. Required Amendments

(a) *Review of decisions not to inspect or enforce.* As required by 30 CFR 946.16(d), Virginia is revising VR 480-03-19.842.15(d) to provide that the State Director's decisions on citizen requests for review of an inspector's decision not to inspect or enforce with respect to any violation alleged by that citizen are appealable under the Virginia Administrative Process Act, [section 9-6.14:1 *et seq.* of the Code of Virginia] rather than under appeal procedures of VR 480-03-19.843.16, which, as discussed in Finding 3(a) of the March 7, 1988, *Federal Register* (53 FR 7184), are highly specific to appeals of enforcement actions and are not readily applicable to other decisions of the State Director. The Director finds that the amendment satisfies the

requirements of 30 CFR 946.16(d) and that revised VR 480-03-19.842.15(d) is therefore now procedurally similar to and no less effective than the corresponding Federal rule at 30 CFR 842.15(c).

(b) *Review of decisions on abatement period extensions.* As required by 30 CFR 946.16(e), Virginia is revising VR 480-03-19.843.12(j) to provide that any decision of the State Director approving or denying a request for an extension of the abatement period for a notice of violation beyond 90 days is subject to formal appeal under the Virginia Administrative Process Act (Section 9-6.14:1 *et seq.* of the Code of Virginia) rather than under the appeal procedures of VR 480-03-19.843.16, which, as discussed in Finding 3(b) of the March 7, 1988, *Federal Register* (53 FR 7184), are highly specific to appeals of enforcement actions and are not readily applicable to other decisions of the State Director. Therefore, the Director finds that revised VR 480-03-19.843.12(j) is procedurally similar to and no less effective than the corresponding Federal rule at 30 CFR 843.12(j) and that the amendment satisfies the requirements of 30 CFR 946.16(e).

2. Protection of Historic Resources

On February 10, 1987, OSM promulgated new Federal rules pertaining to the protection of cultural and historic resources (52 FR 4244-4263). By letter dated June 9, 1987 (Administrative Record No. VA-682), OSM notified Virginia of the changes needed for the Virginia program to remain no less effective than the revised Federal rules. In response to OSM's June 9, 1987, letter, Virginia submitted proposed amendments addressing all required changes, as summarized below:

(a) *Coal exploration.* New VR 480-03-19.772.12(b)(8)(iv) requires that applicants for permits to explore for more than 250 tons of coal provide any information which the Division may request regarding known or unknown historic or archaeological resources. This requirement is identical to that of the corresponding Federal rule at 30 CFR 772.12(b)(8)(iv).

(b) *Permit coordination.* Like 30 CFR 773.12, revised VR 480-03-19.773.12 requires that Virginia coordinate with other agencies in the review and approval of permit applications in accordance with applicable provisions of the Archaeological Resources Protection Act of 1979 where Federal lands covered by that Act are involved. Unlike the Federal rule, the revised State rule does not address Indian lands. However, since SMCRA does not authorize States to regulate mining on

such lands, it would be inappropriate for the State to do so. Consistent with the February 10, 1987 revisions to 30 CFR 773.12, Virginia also has deleted the reference to Executive Order 11593 from this rule. Since this order has been incorporated into an amended version of the National Historic Preservation Act, which the state rule continues to reference, the reference to E.O. 11593 is unnecessary.

(c) *Permit findings.* In VR 480-03-19.773.15(c), Virginia is deleting existing subparagraph (11), the permit finding regarding protection of private family burial grounds. Since private family burial grounds are now classified and protected as cemeteries, this finding is no longer needed. Virginia is replacing it with a new finding which specifies that the Division has taken into account the effect of the proposed operation on properties listed or eligible for listing on the National Register of Historic Places (NRHP). The new rule requires the Division to support this finding through permit conditions, operation plan changes, or a documented decision that no additional protective measures are needed. These revisions are substantively identical to the revisions to the corresponding Federal rule at 30 CFR 773.15(c)(11).

(d) *Identification of historic properties.* VR 480-03-19.779.12(b) and 480-03-19.783.12(b) have been revised to add a requirement that permit applications for surface and underground operations describe and identify archaeological resources listed or eligible for listing on the NRHP within the proposed permit and adjacent areas and to expressly require that the State Historic Preservation Officer be involved in the identification process. In addition, new paragraph (b)(2) specifies that Virginia may require the applicant, through collection of additional information, conduct of field investigations or other appropriate analyses, to identify and evaluate important historic or archaeological resources that may be eligible for listing on the NRHP. The revised rules are identical to the corresponding Federal rules at 30 CFR 779.12(b) and 783.12(b).

(e) *Mapping requirements.* VR 480-03-19.779.24(j) and 480-03-19.783.24(j), which require that maps for surface and underground mining permit applications identify each cemetery located in or within 100 feet of the proposed permit area, have been revised to delete distinctions between public and private cemeteries and references to Indian burial grounds and other areas where human bodies are interred. The deleted language is redundant since all such

areas are included within the definition of cemetery (VR 480-03-19.700.5). The revised rules are identical to the corresponding Federal rules at 30 CFR 779.24(j) and 30 CFR 783.24(j).

(f) *Protection of public parks and historic places.* VR 480-03-19.780.31 and 480-03-19.784.17 have been revised to specify that permit applications for proposed surface and underground mining operations shall contain plans describing the measures to be used to prevent adverse impacts to public parks and historic places listed on the NRHP, or how such impacts will be minimized if valid existing rights exist or joint agency approval is to be obtained to allow mining. In addition, these rules have been revised to specify that Virginia may require permit applicants to protect historic or archaeological properties listed or eligible for listing on the NRHP through appropriate mitigation or treatment measures. The revised rules are substantively identical to the corresponding Federal rules at 30 CFR 780.31 and 784.17.

As discussed above, all the revised State regulations pertaining to the protection of cultural and historic resources are substantively identical to their Federal counterparts. Therefore, the Director finds that the proposed revisions are no less effective than the corresponding Federal regulations.

3. Fragile and Historic Lands

In response to changes in the Federal definitions of "fragile lands" and "historic lands," Virginia proposed several nonsubstantive changes to the State definitions of these terms in VR 480-03-19.700.5. Since the revised definitions contain language identical to the corresponding Federal definitions in 30 CFR 762.5, the Director finds that they are no less effective than the Federal definitions.

4. Revegetation Success Standards for Woody Plants

Virginia proposes to revise VR 480-03-19.816.116(b)(3)(v)(C) and 480-03-19.817.117(b)(3)(v)(C) to reduce the minimum required stocking of woody plants on steep slopes from 600 to 400 plants per acre where the approved postmining land use is wildlife habitat, recreation, shelterbelts or forest uses other than commercial forestland. The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require that stocking rates and planting arrangements for these land uses be specified by the regulatory authority after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs.

By general policy memorandum dated November 2, 1986, which is part of Administrative Record VA-680, J. W. Garner, Virginia's State Forester, announced that, based on research results and a literature review, the Department of Forestry had determined optimum stocking to be 400-500 seedlings per acre for loblolly pine and 200-400 seedlings per acre for white pine. Virtually all trees planted on reclaimed sites in Virginia are one of these two species since, as noted in a January 10, 1986, letter from W. C. Stanley, Chief of Forest Management for the Virginia Division of Forestry, planting of commercial hardwood species has produced very poor results in the State. In the same letter, Mr. Stanley recommends that hardwood plantings for commercial purposes occur only on an experimental basis until a proven methodology can be found, noting that pine stands will eventually revert to hardwoods in the course of natural succession. The letter also states that if additional stocking is desired on steep slopes for initial ground cover, it should be done with shrub or nurse crop species.

Since the reduced stocking level included in the revised regulations results from and implements the recommendations of the State Division of Forestry, the Director finds that the State has complied with the consultation and approval requirements of 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) with respect to stocking on lands reclaimed for the production of forest products. Also, by letter dated September 21, 1988, the Virginia Department of Game and Inland Fisheries endorsed the reduced stocking level for woody plants used to create wildlife habitat. Even though wildlife plantings normally include species other than white and loblolly pine, the Department found that reduced stocking of all woody plants would be more conducive to the creation of wildlife habitat since it would better facilitate the creation of wildlife openings. Therefore, the Director finds that the State has complied with the consultation and approval requirements of the Federal rules with respect to stocking on lands reclaimed for wildlife management uses.

Since the revised rules concern only stocking, the portion of the Federal rule requiring State forestry and wildlife agency approval of planting arrangements is not germane to this amendment. However, as noted in the above-cited correspondence, the Division of Forestry requires well-distributed, evenly spaced, free-to-grow stands with minimal species diversity.

while the Department of Game and Inland Fisheries requires a diversity of trees and shrubs and the inclusion of nonstocked areas (wildlife openings) through the use of shelterbelt, clump or block plantings of specific minimum dimensions. The Director expects that, consistent with the Federal rule, the State will adhere to these recommendations, as specified by VR 480-03-19.816.116(b)(3)(v)(A) and 480-03-19.817.116(b)(3)(v)(A), which require utilization of local and regional recommendations regarding species composition, spacing and planting arrangement.

5. Approximate Original Contour Variances for Commercial Forestry

Virginia proposes to amend VR 480-03-19.785.13, Experimental Practices Mining; 480-03-19.785.14, Mountaintop Removal Mining; and 480-03-19.785.16, Steep Slope Mining, to include commercial forestry as a form of commercial land use. By establishing commercial forestry as a commercial land use, minesites with an approved postmining land use of commercial forestry would be eligible for a variance from the approximate original contour (AOC) restoration requirements of SMCRA and the approved State program.

In establishing which postmining land uses qualify a site for a variance from the AOC restoration requirements, Congress used standard land use planning and zoning categories and terminology (agricultural, industrial, commercial, residential, public facilities or use). There is nothing in the legislative history of SMCRA or the context of these terms which suggests that Congress intended to impart other than the usual and customary meaning to these terms. As discussed in the preamble to 30 CFR 785.16 (44 FR 15083-15084, March 13, 1979), variances should be narrowly applied to achieve specific limited objectives, not broadly construed in a manner that would effectively nullify the general AOC restoration requirement. In addition, the preambles to both 30 CFR 785.13 and 785.16 (experimental practices and steep slope mining) incorporate the preambles to their proposed rules, which state that the statutory language shall be strictly construed and that the list of postmining land uses shall be construed narrowly (49 FR 41712-41713, September 18, 1978, as incorporated by reference at 44 FR 15081 and 15083, March 13, 1979). In usual and customary use and as defined at 30 CFR 701.5, a commercial land use is one devoted to establishments engaged in the retail sale or trade of goods or services, not their manufacture,

production, wholesaling or warehousing. "Forestry" is defined in 30 CFR 701.5 as "land used or managed for the long-term production of wood, wood fiber or wood-derived products." Thus forestlands are distinct from and do not qualify as commercial use lands.

Sections 515(e)(2) and 711 of SMCRA, and the corresponding Federal rules at 30 CFR 785.16(a)(1) and 785.13(b)(2), respectively, authorize AOC variances for steep slope mines and as experimental practices, but only if the planned postmining land use is an industrial, commercial, residential or public use. Since, as discussed above, commercial forestry is not a commercial land use, the Director finds that the proposed revisions to VR 480-03-19.785.13(b)(2) and 480-03-19.785.16(a)(1) to classify commercial forestry as a commercial land use are less stringent than the cited provisions of SMCRA and less effective than the cited Federal rules. In addition, they are inconsistent with the definition of commercial land use at 30 CFR 701.5. However, the Director notes that, under 30 CFR 816.102(g)(2) and VR 480-03-19.816.102(g)(2), Virginia has the authority to approve a terrace-type backfill if needed to implement any approved postmining land use. For the steep slope contour mines commonly found in Virginia, terraces usually would provide as much flatland as could be created under any AOC variance, given the narrow width of the benches and the requirement for complete highwall elimination in either case.

Section 515(c)(3) of SMCRA and the corresponding Federal rules at 30 CFR 785.14(c)(1) also authorize an AOC variance for mountaintop removal operations, but only if the planned postmining land use is an industrial, commercial, agricultural, residential, or public facility use. Since, as discussed above, commercial forestry is not a commercial land use, the Director finds that the proposed revision to VR 480-03-19.785.14(c)(1) classifying commercial forestry as a form of commercial land use is inconsistent with the Federal definition of commercial land use at 30 CFR 701.5.

However, since both the State and Federal laws and regulations allow AOC variances for mountaintop removal operations with an agricultural postmining land use, the Director notes that his disapproval of this proposed classification does not prohibit Virginia from authorizing AOC variances for mountaintop removal operations with a commercial forestry postmining land use. The preamble to the revised definition of "land use" at 30 CFR 701.5

states that, in this context, "agricultural use" shall be interpreted to include "croplands, pasture land or land occasionally cut for hay, grazing lands and forestry" (48 FR 39893, September 1, 1983, emphasis added), a change from the preamble to the definition of "agricultural use" at 44 FR 14925 (March 13, 1979), which does not include the italicized language. The Federal definition of "forestry" at 30 CFR 701.5, as explained in the preamble (44 FR 14934, March 13, 1979), involves a combination of land use and management, i.e., it does not include unmanaged forest land. Thus, it is equivalent to the term "commercial forestry" as used by Virginia. Therefore, no program amendment is necessary for Virginia to authorize AOC variances for mountaintop removal operations with a commercial forestry postmining land use.

6. Reinstate Procedures for Persons Forfeiting Bond or Having Mining Permit Revoked

Virginia is proposing to add VR 480-03-19.773.15(c)(12), 480-03-19.800.52 and 480-03-19.843.13(f) to establish procedures whereby persons who have forfeited a performance bond or had a mining permit revoked in Virginia, and who thus are unable to obtain mining permits within the State, can regain eligibility to obtain new permits. These procedures apply only to persons who have forfeited bonds or had permits revoked under chapters 14, 17, 19, or 23 of Title 45.1 of the Code of Virginia. They do not apply to persons who have been permanently barred from receiving a permit under section 45.1-238(c) of the Code of Virginia or VR 480-03-19.773.15(b)(3). Any person who is found to control or have controlled a mining operation, in any State, with a demonstrated pattern of willful violations of SMCRA or an approved State program of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA or the State program will remain permanently barred from obtaining a new permit.

Proposed VR 480-03-19.843.13(f) would authorize any person who owns or controls or has owned or controlled any operation on which the permit has been revoked by the Division to apply for reinstatement pursuant to VR 480-03-19.800.52. Proposed VR 480-03-19.800.52 would require that (1) each forfeiture site be fully reclaimed; (2) all outstanding penalties, fees, fines and reclamation taxes be paid; (3) any costs in excess of the forfeited bond amount which may have been paid by the

Commonwealth to reclaim the abandoned site(s) be repaid; (4) any outstanding violations be corrected; and (5) a separate \$5,000 civil penalty be paid for each site forfeited. Proposed VR 480-03-19.773.15(c)(12) would add a new required permit finding that the applicant has not owned or controlled an operation for which the permit has been revoked or the bond forfeited pursuant to any State or Federal law, rule or regulation pertaining to surface coal mining activities or air or water environmental protection, unless that person has been reinstated by the authority which revoked the permit or forfeited the bond.

As promulgated on October 3, 1988, 30 CFR 773.15(b)(1) prohibits the issuance of a permit if bond has been forfeited for any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant if the violations upon which the forfeiture was based have not been corrected. The permit finding proposed by Virginia at VR 480-03-19.773.15(c)(12), as discussed above, would act as a similar prohibition with respect to the applicant and any persons under his or her ownership or control.

However, since it does not extend to persons who own or control the applicant, it is less effective than the Federal rule. Therefore, the Director is requiring that Virginia further amend this rule to prohibit the issuance of a permit to an applicant where any person who owns or controls the applicant owns or controls or has owned or controlled an operation upon which bond has been forfeited and the underlying violations have not been abated.

Otherwise, neither SMCRA nor the Federal regulations contain provisions or specifications concerning the reinstatement of eligibility for persons who have forfeited bond or had permits revoked. Therefore, Virginia is free to establish such criteria and procedures as it deems appropriate, provided they are not inconsistent with other permanent program requirements. As discussed above, the Virginia rules are in addition to, not in place of, existing rules and requirements; they do not supersede any existing provisions. Therefore, except as previously noted with respect to VR 480-03-19.773.15(c)(12), the Director finds that Virginia's proposed rules are not inconsistent with the requirements of SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

The Director initially solicited public comments and provided for a public hearing on the proposed amendments in the May 24, 1988, *Federal Register* (53 FR 18578-18579). Comments were received from the National Wildlife Federation (NWF) and National Coal Association (NCA). Since no one requested an opportunity to testify at the scheduled public hearing, the hearing was canceled. Following Virginia's submission of revisions and clarifications on September 14, 1988, the Director reopened the public comment period in the October 25, 1988, *Federal Register* (53 FR 42974-42975). No additional public comments were received by the close of the comment period on November 9, 1988.

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director also provided various Federal agencies an opportunity to comment on the proposed amendments. Only the U.S. Forest Service (USFS) elected to do so.

Since these amendments pertain to the protection of historic properties, the Director, pursuant to 30 CFR 732.17(h)(4), solicited comments from the Virginia Historic Preservation Officer and the Advisory Council on Historic Preservation. Neither agency elected to respond.

Except for those comments voicing general support, but providing no supporting rationale independent of that supplied by the Commonwealth, comments received are discussed below by subject area:

Reinstatement of Persons with Bond Forfeitures

1. The NWF states that the proposal would contradict section 510(c) of SMCRA by allowing permits to be issued to persons who are permanently barred from obtaining permits because they control or have controlled mining operations. The NWF contends that patterns of violations in general and bond forfeitures in particular would result in a permanent bar under this provision of SMCRA. The Director does not agree. Section 510(c) of SMCRA imposes a permanent bar against permit issuance only if the demonstrated pattern of willful violations is also of "such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply." Thus, even if a pattern of willful violation exists, the person to whom such a pattern is attributed may still obtain a permit if the pattern is not of such nature and duration with such resulting irreparable damage to the

environment as to indicate an intent not to comply, provided that person has shown that the violations have been abated or are in the process of being abated. VR 480-03-19.773.15(b)(3) contains a permanent bar consistent with section 510(c) of SMCRA. As discussed in Finding 6, proposed VR 480-03-19.800.52 supplements, but does not supersede or replace the requirements of VR 480-03-19.773.15(b).

2. Issues were raised asserting inconsistency between the proposed rule and the approved program of West Virginia. Such issues, however, are not relevant to the Director's decision as to the adequacy of the rule under the applicable standards of review for program amendments. Regardless of the consistency of the proposed rule with those of another State program, the Director may determine the proposal to be no less stringent than SMCRA and no less effective than OSM's regulations. The existence of more stringent provisions in one other program does not invalidate the current analysis.

3. According to NWF, reinstatement should not be allowed until an applicant has totally fulfilled all obligations set forth in the procedures contained in VR 480-03-19.800.52, i.e., no reinstatement should occur if the applicant is merely in the process of correcting the outstanding violations. The Director does not agree. Virginia's proposal is no less effective than the Federal regulation at 30 CFR 773.15(b)(1)(i), which provides that a permit may be issued to a person with outstanding violations if the applicant can show that all such violations are being corrected to the satisfaction of the agency having jurisdiction. However, by separate letter dated May 11, 1989 (Administrative Record VA-726), the Director has notified Virginia that, pursuant to the October 3, 1988, revisions to the related Federal rule at 30 CFR 773.15(b)(1)(ii), the State will need to revise its program to require conditional issuance in such cases.

4. The NWF notes that reinstatement procedures will not work if they are applied across State boundaries, e.g., if fees and penalties owed to one State are paid to another State in exchange for the right to mine within the second State. In response, the Director notes that, as stated in Finding 6 and the State rule itself, the procedures contained in VR 480-03-19.800.52 apply only to bonds which are forfeited or permits which are revoked within Virginia. If an applicant has outstanding violations, fees, penalties or bond forfeitures in other States, permit approval will be

subject to the criteria contained in VR 480-03-19.773.15(b).

5. The NWF states that section 510(c) of SMCRA provides that failure to pay civil penalties, debts and abandoned mine land fees is a valid basis for denying permit approval. The Director agrees that, under the revised Federal regulations at 30 CFR 773.15(b), as promulgated on October 3, 1988, no permit may be issued unless all penalties and fees assessed pursuant to an applicable Federal or State program are paid. However, since Virginia is not proposing to revise VR 480-03-

19.773.15(b), the State counterpart to 30 CFR 773.15(b), in this amendment, this comment is outside the scope of this rulemaking. By separate letter dated May 11, 1989, the Director has notified Virginia of the changes in VR 480-03-19.773.15(b) needed to be no less effective than the revised Federal rule.

6. The NWF argues that VR 480-03-19.80.42 is inconsistent with SMCRA because it does not specify that payment of interest on any outstanding Federal debts is also a prerequisite to reinstatement. The Director does not agree. As noted above, neither SMCRA nor the Federal regulations contain provisions or specifications concerning the reinstatement of eligibility for persons who have forfeited bond or had permits revoked (except when such revocation is based on a pattern of willful violation). Therefore, Virginia is free to establish such criteria and procedures as it deems appropriate, provided they are not inconsistent with other permanent program requirements. The Virginia rules set minimum criteria for determining reinstatement eligibility; they are in addition to and not in place of existing Virginia program rules governing permit approval at VR 480-03-19.773.15(b).

7. The NWF states that Virginia's reinstatement procedures present legal complications relating to bankruptcy law. Specifically, it questions whether Virginia has the authority to require payment of civil penalties and abandoned mine reclamation fees which are due under SMCRA or an approved State program but which have been discharged in bankruptcy proceedings. In response, the Director notes that pre-petition civil penalties and abandoned mine reclamation fees discharged by a corporation in a chapter 11 or an individual in chapter 13 bankruptcy proceeding are no longer valid debts and cannot be used for purposes of permit denial.

Commercial Forestry as a Commercial Land Use

1. The NWF objects to Virginia's proposal to categorize commercial forestry as a form of commercial land use for which a variance from AOC restoration requirements could be approved, explaining at length how it believes this proposal to be inconsistent with both SMCRA and the Federal rules. As explained in Finding 5, the Director agrees that commercial forestry is not a commercial land use. Therefore, he is not approving these proposed rule changes.

2. The NCA states that both SMCRA and the Federal rules recognize forestry as a commercial postmining land use for purposes of eligibility for variances from approximate original contour under either the standards for steep slope mining or those for experimental practices. However, it provides no documentation or rationale for this statement. Therefore, for the reasons set forth in Finding 5, the Director cannot concur.

3. The NCA argues that adherence to AOC restoration requirements is hindering the State's economic development potential (by preventing the creation of flat land) and reducing the land's productivity for forestry purposes. In response to the first argument, the Director notes that this issue was extensively debated during the formulation of SMCRA and that the compromise between aesthetics and economic utility struck in that Act and its regulations has been consistently upheld in subsequent litigation. With respect to the second argument, both the documents referenced by the commenter and the research paper submitted by Virginia relate the forest growth problems experienced on regarded mined lands to compaction of the backfill and topsoil, not restoration to AOC.

4. The USFS stated that, while Virginia's proposal to allow AOC variances for commercial forestry endeavors has some potential, the proposal also has the potential of allowing the mining industry to circumvent what is perceived as a fundamental aspect of SMCRA, i.e., elimination of the visual scars of surface mining. The USFS also questions the viability of commercial forestry on the long, narrow benches that would be created on steep slope contour mining operations, and requests clarification as to how this proposal would be implemented. As explained in Finding 5, the Director is not approving this proposed amendment. Therefore, it is not necessary to pursue this request.

Stocking of Woody Plants

The NWF states that a decision on Virginia's proposal to reduce the minimum required stocking on steep slope areas from 600 to 400 plants per acre should be delayed until OSM takes final action on the proposed Federal regulations concerning revegetation success standards. These regulations have since been promulgated in final form (53 FR 34636, September 7, 1988) and the Director has used them in evaluating this proposed amendment. Therefore, this comment is now moot. As discussed in Finding 4, Virginia has complied with all applicable requirements of the revised rules.

V. Director's Decision.

Based on the above findings, the Director is approving the proposed amendments submitted by Virginia on April 6, 1988, as revised and clarified on September 14, 1988, with the exception of those provisions determined to be inconsistent with SMCRA or less effective than the Federal regulations.

For the reasons discussed in Finding 5, he is not approving the proposed amendments to VR 480-03-19.785.13(b)(2), 480-03-19.785.14(c)(1) and 480-03-19.785.16(a)(1) to establish commercial forestry as a form of commercial land use. Also, for the reasons discussed in Finding 6, he is requiring that Virginia further amend VR 480-03-19.773.15(c)(12) to prohibit permit issuance in instances where any person who owns or controls the applicant owns or controls or has owned or controlled a mining operation for which bond has been forfeited and the underlying violations have not been abated.

The Federal rules at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. For the reasons set forth in Finding 1, the Director is removing the requirements previously placed in Virginia at 30 CFR 946.16(d) and (e). This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(g) prohibits unilateral changes to approved State programs. Therefore, unapproved changes are not

enforceable as part of the program. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials.

VI. Procedural Determinations.

Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*]. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 26, 1990.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (aa) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

(aa) With the exception of the amendments listed in the paragraph (9) below entitled "Exceptions", the amendment submitted by Virginia on April 6, 1988, and revised on September 14, 1988, are approved effective February 5, 1990, provided Virginia promulgates these regulations in a form identical to that in which they were submitted to OSM and reviewed by the public. The approved amendments are:

(1) Revisions to VR 480-03-19.842.15(d) to provide that the State Director's decisions on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen are appealable in accordance with the Virginia Administrative Process Act.

(2) Revisions to VR 480-03-19.843.12(j) to provide that the State Director's decisions on whether to allow extension of the abatement period for a violation beyond 90 days are appealable in accordance with the Virginia Administrative Process Act.

(3) Revisions to the definitions of fragile and historic lands at VR 480-03-19.700.5.

(4) Revisions to the following regulations concerning the protection of cultural and historic resources: VR 480-03-19.772.12(b)(3)(iv); 480-03-19.773.12; 480-03-19.773.15(c)(11); 480-03-19.779.12(b); 480-03-19.779.24(j); 480-03-19.780.31; 480-03-19.783.12(b); 480-03-19.783.24(j); and 480-03-19.784.17.

(5) Addition of VR 480-03-19.773.15(c)(12) to require that, prior to approving a permit application or application for a significant revision, the State Director find in writing that the applicant or the permittee specified in the application has not owned or controlled a surface coal mining and reclamation operation for which the permit has been revoked or the bond forfeited pursuant to the Code of Virginia or any Federal law, rule or regulation, or any law, rule or regulation enacted pursuant to Federal or State law pertaining to air or water environmental protection and surface coal mining activities in any other State, unless the applicant has been reinstated by the agency which revoked the permit or forfeited the bond.

(6) Addition of VR 480-03-19.800.52, which establishes criteria and procedures whereby persons who have forfeited bond in Virginia may regain eligibility to obtain permits.

(7) Addition of VR 480-03-19.843.13(f) to allow persons who have had a permit revoked to apply for reinstatement pursuant to VR 480-03-19.800.52.

(8) Revisions to VR 480-03-19.816.116(b)(3)(v)(C) and 480-03-19.817.116(b)(3)(v)(C) to reduce the revegetation success standard for the stocking of woody plants on steep slopes from 600 per acre to 400 per acre.

(9) *Exceptions:* Revisions to VR 480-03-19.785.13(b)(2), 480-03-19.785.14(c)(1) and 480-03-19.785.16(a)(1) to classify commercial forestry as a form of commercial land use.

3. In § 946.16, the heading is revised, paragraphs (b) and (c) remain reserved, paragraphs (d) and (e) are removed and paragraph (a) is added to read as follows:

§ 946.16 Required regulatory program amendments.

(a) By July 1, 1990, Virginia shall submit revisions to its coal surface mining reclamation regulations at VR 480-03-199.773.15(c)(12) or otherwise propose to amend its program to prohibit the issuance of a permit when any person who owns or controls the applicant owns or controls or has owned or controlled surface coal mining and reclamation for which bond has been forfeited and the underlying violations have not been abated.

(b) [Reserved].

(c) [Reserved].

[FR Doc. 90-2428 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD79

On-Job Training and Work Experience in State and Local Agencies

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: Participation in the program of on-job training and work experience at no or nominal pay has been extended to state and local government agencies which receive Federal financial assistance. Previously, only Federal agencies could be used to provide on-job training or work experience at no or nominal pay. The law also directs the Department of Veterans Affairs (VA) to develop regulations governing the conduct of this program by state and

local government agencies. The intended effect of this change is to broaden opportunities for disabled veterans to acquire the training and work experience which will help them secure and maintain suitable employment.

DATES: These amendments are effective March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-6496.

SUPPLEMENTARY INFORMATION: At pages 38254 and 38255 of the *Federal Register* of September 15, 1989, the agency published proposed regulatory amendments which extend the program of on-job training and work experience in Federal agencies to state and local agencies. Previously only Federal agencies could be used to provide on-job training and work experience for disabled veterans on a no or nominal pay basis. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. Since no comments, suggestions, or objections were received, these amendments are adopted as final.

The Secretary of Veterans Affairs hereby certifies that these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis required of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits or recipients of such benefits will be directly affected.

The VA has determined that these amendments do not meet the criteria for major rules as contained in Executive Order, 12291, Federal Regulations. These amendments will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or process, and will not have any other significant adverse effects on the economy.

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant

programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 9, 1990.
Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended by revising § 21.299 to read as follows:

§ 21.299 Use of Government facilities for on-job training or work experience at no or nominal pay.

(a) *Types of facilities which may be used to provide training.* Notwithstanding any other provision of regulations governing chapter 31, the facilities of any agency of the United States or of any State or local government receiving Federal financial assistance may be used to provide training or work experience at no or nominal pay as all or part of the veteran's program of vocational training under §§ 21.123, 21.294, and 21.296 of this part. The counseling psychologist and case manager must determine that the training work experience is necessary to accomplish vocational rehabilitation and providing such training or work experience is in the best interest of the veteran and the Federal government.

(Authority: 38 U.S.C. 1515, Pub. L. 100-689)

(b) *Employment status of veterans.* (1) While pursuing on-job training or work experience in a facility of the United States, a veteran:

(i) Shall be deemed to be an employee of the United States for the purposes of benefits under chapter 81, title 5, United States Code; but

(ii) Shall not be deemed an employee of the United States for the purpose of laws administered by the Office of Personnel Management.

(2) While pursuing on-job training or work experience in a State or local government agency the veteran shall have the employment status and rights comparable to those provided in paragraph (b)(1) of this section for a veteran pursuing on-job training or work experience at a Federal agency.

(Authority: 38 U.S.C. 1515, Pub. L. 100-689)

(c) *Terms applicable to training in State and local government.* (1) The term "State" means each of the several States Territories, any possession of the United States, the District of Columbia, and the

Commonwealth of Puerto Rico.

(Authority: 38 U.S.C. 101(20))

(2) The term "local government agency" means an administrative subdivision of a government including a county, municipality, city, town, township, public authority, district, school district, or other such agency or instrumentality of a local government.

(3) The term "Federal financial assistance" means the direct or indirect provision of funds by grant, loan, contract, or any other arrangement by the Federal government to a State or local government agency.

(d) *Additional considerations in providing on-job training and work experience in State and local government agencies.* (1) The veteran's progress and adjustment in a rehabilitation program conducted wholly or in part at a State or local government agency shall be closely monitored by VR&C staff members to assure that:

(i) Training and rehabilitation services are provided in accordance with the veteran's rehabilitation plan. The plan shall provide for:

(A) Close supervision of the veteran's progress and adjustment by the case manager during the period he or she is at the State or local government agency; and

(B) The employer's periodic certification (not less than once every three months) that the veteran's progress and adjustment are in accordance with the program which has been jointly developed by VA, the veteran and the employer; and

(ii) The veteran achieves his or her employment goal.

(2) Training may not be provided for a position which involves religious or political activities;

(3) The veteran's training:

(i) Will not result in the displacement of currently employed workers; and

(ii) Will not be in a job while another person is laid off from a substantially equivalent job, or will not be in a job the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its workforce with the intention of using the opening for a Chapter 31 trainee.

(Authority: Pub. L. 100-689)

[FR Doc. 90-2552 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

**GENERAL SERVICES
ADMINISTRATION**

41 CFR Subtitle F

[FTR Temp. Reg. 1]

Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulations.

SUMMARY: This rule extends the expiration date of FTR Temp. Reg. 1, "Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies," to June 30, 1990. This extension will keep FTR Temp. Reg. 1 in effect while GSA proceeds to permanently codify its provisions.

DATES: Effective date: January 1, 1990. Expiration date: June 30, 1990.

FOR FURTHER INFORMATION CONTACT:

Larry Tucker, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost of society.

By the Administrator's authority (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)), FTR Temporary Regulation 1 in the appendix to subtitle F of title 41 of the Code of Federal Regulations is amended by revising item 3 to read as follows:

Federal Travel Regulation Temporary Regulation 1

3. **Expiration date.** This regulation expires June 30, 1990, unless sooner canceled or revised.

Dated: January 9, 1990

Richard G. Austin

Acting Administrator of General Services.

[FR Doc. 90-2152 Filed 2-2-90; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Chapter 101

[FPMR Temp. Reg. A-34, Supp. 1]

Limiting Travel Advances to Manage Cash More Effectively

AGENCY: Federal Supply Service, CSA.

SUMMARY: This supplement extends the expiration date of FPMR Temp. Reg. A-34, "Limiting Travel Advances to Manage Cash More Effectively," to June 30, 1990. This extension will keep FPMR Temp. Reg. A-34 in effect while GSA proceeds to permanently codify its provisions.

DATES: Effective date: January 1, 1990. Expiration date: June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Authority: 5 U.S.C. 5701-5709 and E.O. 11609, July 22, 1971 (36 FR 13747).

In title 41 of the Code of Federal Regulations, supplement 1 to FPMR Temp. Reg. A-34 is added to the appendix at the end of Subchapter A to read as follows:
January 9, 1990.

Federal Property Management Regulations

Temporary Regulation A-34, Supplement 1

TO: Heads of Federal agencies

Subject: Limiting travel advances to manage cash more effectively

1. **Purpose.** This supplement extends the expiration date of FPMR Temp. Reg. A-34 to keep the regulation in effect while GSA proceeds to permanently codify its provisions.

2. **Effective date.** This supplement is effective January 1, 1990.

3. **Expiration date.** This supplement expires June 30, 1990, unless sooner canceled or revised.

4. **Explanation of changes.** The expiration date in paragraph 3 of FPMR Temp. Reg. A-34 is extended to June 30, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 90-2151 Filed 2-2-90; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6764

[INV-930-00-4214-10; N-50566]

Withdrawal of Public Land for Administrative Site and Fire Station Complex; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 10 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect an administrative site and fire station complex in Eureka County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-328-6326.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Eureka Administrative Site and Fire Station Complex:

Mount Diablo Meridian

T. 19 N., R. 53 E.,
Sec. 11, E½NW¼SW¼NE½ and
W½NE¼SW¼NE½

The area described contains 10 acres in Eureka County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this

order unless, as a result of a review conducted before the expiration of date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: January 26, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-2569 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-NC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-75, DA 90-96]

Provision of Aeronautical Services Via the INMARSAT System

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of time.

SUMMARY: On August 4, 1989, the Commission issued a Report and Order 54 FR 33224, August 14, 1989, in the Matter of Provision of Aeronautical Services via the INMARSAT System, Docket 87-75. A Petition for Reconsideration was filed by British Telecommunications, plc (BT) and the instant Order extends the time for filing reply pleadings to the opposition and the other comments that have been filed in response to BT's Petition. The extension affords the public more time to deal with the complex issues presented.

DATES: Date for filing replies to the opposition and other comments filed in response to the Petition is extended to February 20, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Ball (202) 632-7265.

SUPPLEMENTARY INFORMATION:

Extension of Time

Adopted: January 23, 1990.

Released: January 25, 1990.

By the Chief, Common Carrier Bureau:
1. British Telecommunications plc
(BT) has filed a request for extension of time from January 26, 1990 to February 20, 1990 to file reply pleadings in the captioned matter. BT requests the extension in view of the volume of the materials filed in response to its Petition for Reconsideration in this proceeding. BT states that it has contacted all of the parties that responded to its petition and

has been informed that they do not object to the requested extension. BT believes that the pleading cycle in this proceeding should coincide with that in I-S-P-90-002. ARINC has concurrently filed a request for extension to February 20 for the time to file reply pleadings in that proceeding.

2. Good cause has been shown for grant of the instant request. The complexity and importance of the issues raised by both BT's petition and the responsive pleadings warrant the requested extension of time to prepare replies. We are simultaneously granting ARINC's request to extend the dates for filing reply pleadings in I-S-P-90-002.

3. Accordingly, it is ordered, That the request of BT is granted, and the time for filing reply pleadings in the captioned matter is extended to February 20, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90-2495 Filed 2-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-63; RM-6583]

Radio Broadcasting Services; Chubbuck, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Chubbuck Community Broadcasters, Inc., see 54 FR 12250, March 24, 1989, substitutes Channel 253C2 for Channel 252A at Chubbuck, Idaho, and modifies its license for Station KRCD(FM) to specify operation on the higher powered channel. Channel 253C2 can be allotted to Chubbuck in compliance with the Commission's minimum distance separation requirements at its present transmitter site. The coordinates for this allotment are North Latitude 42-55-15 and West Longitude 112-20-44. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-63, adopted January 12, 1990, and released January 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased

Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by removing Channel 252A and adding Channel 253C2 at Chubbuck, Idaho.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-2495 Filed 2-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-48; RM-6592]

Radio Broadcasting Services; Gray, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Donald W. Earmhart, See 54 FR 10170, March 10, 1989, this document allots Channel 243A to Gray, Georgia, as that community's first local FM service. Channel 243A can be allotted to Gray, Georgia, in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 33-00-36 and West Longitude 83-32-06. With this action, this proceeding is terminated.

DATES: Effective March 15, 1990; the window period for filing applications will open on March 16, 1990, and close on April 16, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-48, adopted January 12, 1990, and released January 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Gray, Georgia, Channel 243A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-2494 Filed 2-2-90; 8:45 am]

BILLING CODE 6712-01-M

The notice also clarifies ambiguities and makes technical corrections. It clarifies that the agency has treated chassis-cabs for many years as vehicles that must bear a form of certification upon entry, as do completed motor vehicles, and that they are not vehicles requiring further manufacturing operations under the revised regulatory scheme. Pursuant to a letter from Ford pointing out that importers of vehicles requiring further manufacturing cannot be expected to declare that the vehicle will conform upon final manufacture when finishing operations are done by other persons, the declaration, § 591.5(e), is amended to remove reference to conformity upon completion of manufacture.

The notice also addresses Mazda's concern for confidentiality of vehicles imported for research, and for NHTSA's consideration of a test fleet permit system.

With respect to Superior's petition for reconsideration of treatment of Canadian-manufactured motor vehicles, the notice denies it for the reasons stated below.

Finally, pursuant to informal consultations with the State Department, the notice amends in minor respects § 591.5(h), relating to importation by foreign military personnel, members of the Secretariat of a public international organization, and other personnel of foreign governments. This amendment is necessary to make this agency's regulations conform with existing practices of that Department's Office of Foreign Missions.

EFFECTIVE DATE: The amendments are effective February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202-366-5263).

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed Public Law 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). A notice of proposed rulemaking to establish 49 CFR part 591 was published on April 25, 1989 (54 FR 17772), and a final rule on September 29, 1989 (54 FR 40069). As the notices stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)).

Two petitions for reconsideration of the final rule were received, one from Volkswagen of America (VW), on behalf of itself, its parent Volkswagen, AG, and Audi AG, and the other from Auto

Enterprises, Inc./Superior Auto Sales (Superior). Even though the Superior petition was not officially received until after the 30th day following publication of the final rule, it was sent by UPS on the 26th day, and apparently arrived at NHTSA on the 30th day but for reasons unknown was returned to the petitioner. The agency, therefore, has chosen to consider it timely filed. Mazda Research & Development of North America, Inc., also petitioned for reconsideration, but its petition was received on the 31st day following publication of the rule, and in accordance with agency regulations (49 CFR 553.35) has been treated as a petition for rulemaking. Informal comments were received from the Office of Foreign Missions of the State Department, calling the agency's attention to its registration procedures for vehicles imported by foreign diplomats, and its lack of registration authority for vehicles imported by foreign military personnel. To the extent that these differ from part 591, corrective conforming amendments have been made, as more fully discussed below.

A. Importation by Foreigners Excepted by Statute

In § 591.5(h), the agency sought to follow the statute, and its understanding of the Department of State's practices, in specifying provisions regarding the importation of nonconforming motor vehicles by certain foreign citizens. Section 591.5(h) provides that such vehicles may be imported by a member of one of three categories specified by statute, pursuant to the declaration that the importer will not sell the vehicle to any person in the United States (other than a buyer in one of the three excepted categories), and that the Office of Foreign Missions (OFM) of the State Department will be provided with documentary proof that the vehicle is being, or has been exported, before the importer departs the United States at the conclusion of a tour of duty.

After reviewing § 591.5(h), OFM has informed this agency that that section differs in several respects from established practices of the Department of State. On the basis of these further comments, this agency is restructuring § 591.5(h) to conform to OFM's regulations and practices. These comments have reassured NHTSA that nonconforming vehicles subject to OFM's procedures are not likely to be sold to American citizens by their importers.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. 89-5; Notice 4]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Action on petitions for reconsideration and rulemaking; final rule.

SUMMARY: The purpose of this notice is to act upon petitions for reconsideration of the final rule of the National Highway Traffic Safety Administration governing importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards. The petitions were filed by Volkswagen of America, and Superior Auto Sales. The notice grants Volkswagen's petition for deletion of the requirement that the Administrator provide prior approval for vehicles imported for purposes of research, etc., and for substitution of the proposed (and existing) requirement that a statement of purpose accompany the importation declaration. This issue was also raised by Mazda of North America in a petition for rulemaking, which is also granted. The notice amends a reference to certification in § 591.5(b), thereby curing an inconsistency for whose correction Volkswagen had petitioned.

1. Personnel of a Foreign Government or International Organization

Under the regulations of the Department of State, personnel of a foreign government on assignment in the United States, or members of the Secretariat of a public international organization within the meaning of the International Organizations Immunities Act, who have been authorized by the Department of State to enter their vehicles duty free, must register with OFM all vehicles they own or operate in the United States, including nonconforming vehicles they have imported. Under the registration process, OFM takes and keeps the vehicle title. Thus, if the vehicle owner wishes to dispose of the vehicle, (s)he must petition OFM for a title. The petition must indicate the reason the title is requested, such as sale, export, or re-registration in the importer's State of residence at the end of a tour of duty.

This is category of importer currently covered by the joint NHTSA-Customs Service rule, 19 CFR 12.80(b)(i)(v), and which will be covered by the new NHTSA rule, § 591.5(h). Owners of nonconforming vehicles imported pursuant to these provisions may not sell the vehicle in the United States except to another person eligible to import the vehicle under these paragraphs. In these cases, OFM requires a corresponding petition from the new owner of the vehicle, and automatically registers the nonconforming vehicle in the name of the new owner. Since no title is needed to transfer ownership, none is issued.

OFM will not issue a title for a nonconforming vehicle that an owner who is remaining in the U.S. at the end of the tour of duty wishes to register in the State of residence.

OFM issues (and will continue to issue) titles to the owners importing vehicles under these provisions, but only for purposes of export. The character of these titles and the nonconforming nature of the vehicle are clearly noted on the front of the export title. Because of this, it is unlikely that a State would ever register a vehicle based upon an OFM export title. The export title will be a surrogate for the documentary proof of export that paragraph (h), as adopted, will require. Therefore, to accord with OFM's practices, instead of specifying that the importer will provide OFM with documentary proof that the vehicle has been or will be exported, NHTSA is amending paragraph (h) to specify that an importer will obtain from OFM, before departure at the conclusion of a tour of duty, an ownership title to the vehicle good for export only.

2. Members of Foreign Armed Forces on Assignment in the U.S.

Section 591.5(h) as adopted also requires members of the armed forces of a foreign country on assignment in the U.S. to provide OFM with documentary proof of export. However, OFM advises that members of this category are generally not required to register their vehicles with OFM, and that therefore they cannot be included with the two other categories for which OFM is able to provide export titles. This means it is possible for a sale of the vehicle and transfer of a foreign title to a U.S. buyer to occur, as there is no Federal intermediary to regulate the transaction. In this event, the vehicle would have to meet the registration requirements of the individual States, some of which may specify compliance with the Federal motor vehicle safety standards. In restructuring paragraph (h) to reflect the comments of OFM, the agency has removed the requirement for provision of documentary proof of export, and replaced it with an affirmative declaration to export the vehicle at the conclusion of the tour of duty. The existing prohibition against sale of the vehicle to any person in the United States, except to another member of the armed forces of a foreign country on assignment in the United States, is retained.

B. Importation for Purposes of Research, etc.

1. Submittal of Substantiating Information Prior to Entry

Under § 591.5(j), a motor vehicle not originally manufactured to conform to the Federal motor vehicle safety standards may be imported pursuant to the declaration that it is being imported for the purposes of research, investigation, studies, demonstrations or training, or competitive racing events, provided that the importer has received written permission from the NHTSA. Under the second sentence of § 591.6(g) (reparaphrased by this notice; see below), each such declaration must be accompanied by a letter from the Administrator authorizing such importation. As the regulation further states, an importer shall submit in advance of such importation a written request to the Administrator, containing the information the regulation requires.

VW has petitioned for deletion of this requirement, arguing that the proposed rule published in April 1989 did not include a requirement that a letter of authorization be submitted, and would have required only a statement from the manufacturer to Customs of the nature currently provided. Thus, VW believes

that it had no opportunity to comment upon this requirement.

NHTSA has considered VW's comment, as well as a similar concern raised by Mazda. Although the agency believes that enforcement of the Act will be enhanced by this provision, and that the requirement it adopted was within the scope of the notice, it nevertheless believes it desirable to have further comment upon the provision. Accordingly, §§ 591.5(j) and 591.6(f) are being amended to continue the existing requirements beyond January 31, 1990. The agency, however, is considering the issuance of a notice of proposed rulemaking formally proposing the requirements that are being deleted by this notice.

However, § 591.5(j) as amended differs in one minor respect from the text proposed. Paragraph (j) lists five categories of permissible purposes of importation contained by the declaration. The proposed text ended with the secondary declaration applicable to all five categories that the vehicle would not be licensed for use on the public roads. The agency does, in fact, allow licensing for use on the public roads when a vehicle has been imported for purposes of test or experiment (19 CFR 12.80(b)(2)). Although these terms are not used by the 1988 Act, which added section 103(j) to the National Traffic and Motor Vehicle Safety Act, the agency has concluded that "research, investigations, studies, and demonstrations or training", terms that appear in section 103(j), are so substantially similar to "test or experiment" that on-road licensing should be allowed. Consequently, § 591.5(j) is being amended to apply the prohibition that was proposed to apply to all categories only to vehicles imported for "competitive racing events". This accords with the informal definition in 19 CFR 12.80(b)(1)(vii) that "a vehicle the configuration of which at the time of entry is such that it cannot be licensed for use on the public roads is considered to be imported for the purpose of competition".

C. Imports Requiring Further Manufacturing

Section 108(e) of the Act provides that there will be no violation of the Act by the importation of a vehicle or equipment item if the vehicle or equipment item requires further manufacturing operations to perform its intended function, as determined by NHTSA, and is accompanied at the time of entry by the written statement of its manufacturer indicating the applicable

Federal standard with which the vehicle or equipment item fails to comply. In implementation of this requirement, the agency adopted § 591.5(e), containing the basic declaration that the vehicle requires further manufacturing operations to perform its intended function, and § 591.6(b) requiring the statement to accompany the declaration. Section 591.5(e) concludes with the phrase that upon completion of further manufacturing operations, the vehicle "will comply with all applicable Federal motor vehicle safety standards". This language assumes that an importer of a vehicle requiring further manufacturing operations is the person who will complete the vehicle.

In a letter to the agency, Ford noted that it is impossible for those importers of incomplete vehicles who do not complete the vehicles to declare that the vehicle when completed will comply with all applicable standards. Further, the obligations to complete the vehicle in a conforming manner and to certify conformance already exist independently as requirements of section 108(a)(1)(A) and section 108(a)(1)(C). A civil penalty may be imposed if they are not met. Therefore, it is not legally necessary as a condition of admission to require those importers who will perform further manufacturing operations to the point of completion to declare that they will do so in a conforming manner. NHTSA therefore is revising § 591.5(e) to remove the language of conformance completion.

The agency noted in the preamble to the final rule (p. 40074) that "a vehicle requiring further manufacturing operations to perform its intended function is an 'incomplete vehicle' as defined by part 568". However, there is a subcategory of "incomplete vehicle" which existing agency regulations (part 567) have required to bear a form of certification of partial compliance. This type of vehicle is a "chassis-cab", defined under the certification regulation as "an incomplete vehicle with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions" (§ 567.3). The manufacturer of the chassis-cab is required to affix a label stating conformity with the standards with which the chassis-cab complies (e.g., controls and displays, wiping and washing systems, brake hoses) and certain statements with respect to the remaining standards (§ 567.5(a)). Certification of chassis-cabs has been required for over 11 years, and, in enforcing the existing importation

provisions, the agency has required entry of uncertified chassis-cabs as nonconforming vehicles. They have been imported under bond, and required to demonstrate conformance with chassis-cab requirements before the bond has been released. The agency did not intend to alter the manner in which it has treated chassis-cabs for many years, as reflected in its statement in the preamble to the final rule (p. 40075) that "if the incomplete vehicle is a chassis-cab and is not certified as required, its importer must be a registered importer who undertakes to bring it into conformance with applicable standards". That is to say, a chassis-cab is a type of motor vehicle to which section 108(c) applies, rather than section 108(e). The agency wishes to clarify this point.

On a related matter, the agency notes that it is considering making in the near future a determination that chassis-cabs that are substantially similar to chassis-cabs certified for sale in the United States are capable of being readily modified to conform to chassis-cab requirements.

2. Whether Each Vehicle Must Have a Separate Statement

In its petition, Mazda apprised the agency of its frequent importation of multiple units of motor vehicles, and asked whether part 591 will require a separate request for each. It advised that the California Air Resources Board (CARB) had determined that the issuance of individual permits was impractical, and, consequently implemented a fleet permit system. Under this system, the manufacturer is required to maintain records on these vehicles and to open these records for inspection by CARB on its request. Mazda asked that NHTSA consider adopting a fleet permit program similar to CARB's.

NHTSA has considered this petition. The agency does not wish to create any undue burden upon importers of vehicles under this section. Therefore, when more than one vehicle is imported, at the same time, for identical or substantially similar purposes, NHTSA is willing to accept a single HS-7 Form and pre-importation approval letter with reference to the vehicles, provided that the VIN or other identifier of each is furnished, and to issue a single letter in reply. In circumstances other than these, the agency believes that separate statements must be submitted, and approvals given. To the extent discussed herein, therefore, Mazda's petition is granted.

3. Confidentiality of Information

Mazda expressed concern about the confidentiality of the applications that would be submitted under § 591.6(f). According to Mazda, the applications, if made available to the public, and most notably to other manufacturers, could provide insight into future product plans and emerging technology.

NHTSA wishes to reassure Mazda and other manufacturers that the information to be submitted does not differ from that Mazda has provided in the past to substantiate its importations for research, testing, and the like. NHTSA is not aware that this has heretofore resulted in requests for confidentiality, or a compromise of a manufacturer's product plans. If a manufacturer believes that its statements will contain confidential material, it may, of course, request appropriate treatment.

D. Original Equipment Manufacturer

VW reiterated its request in comments on the proposal (Notice 1) that the definition of "original manufacturer" include reference to motor vehicle equipment. Although the agency addressed this issue in the preamble to the final rule (Notice 2) by saying that it was not adopted because the 1988 amendments did not affect motor vehicle equipment, VW comments that § 591.5(b) includes a reference to motor vehicle equipment "which paragraph utilizes the term 'original manufacturer'". Thus, it believes that an inconsistency exists, and that the definition in § 591.4 should be amended to include equipment.

The agency adopted the definition of "original manufacturer" for the specific purpose of excluding as manufacturers those who conform vehicles after their original production and before their importation into the United States. As a general rule, an equipment item such as a tire must be manufactured to comply, and cannot be brought into compliance after its manufacture. Thus, unlike a motor vehicle, an equipment item will generally have only one entity involved in the manufacturing or assembling process. To the extent that there is an inconsistency, NHTSA has removed it by amending section 591.5(b) to add the words "or by the manufacturer" with reference to certification of equipment items or their containers. To that extent, it grants VWs petition for reconsideration.

E. Treatment of Canadian-Manufactured Motor Vehicles

Superior purchases new vehicles from franchised dealers in Canada for

importation into the United States, where most of them are sold to dealers holding the same franchise. Typically, the Canadian vehicles are models with U.S. counterparts which U.S. dealers have been unable to obtain in sufficient quantity from the U.S. manufacturer because of high demand. Superior assists the U.S. dealers in meeting demand for a specific vehicle by supplying it with the Canadian counterpart. Many of the models are certified as conforming to the Federal motor vehicle safety standards. However, vehicles manufactured by General Motors (GM) and BMW are certified only as complying with the Canadian Motor Vehicle Safety Standards (CMVSS). Superior concedes that the CMVSS are not in all respects identical to the U.S. ones, but represents that the GM and BMW cars it imports do comply in all essential respects with the U.S. standards, and that they require only one modification, the substitution of a speedometer/odometer that measures miles rather than kilometers. The vehicles have been imported under bond, and proof of conformance submitted to NHTSA. With respect to vehicles manufactured by GM of Canada, the documentation submitted to verify conformance includes a copy of a "Service Parts Identification Label" which contained the code "V73". According to Superior, this indicates that the vehicle is manufactured in accordance with U.S. safety standards. Thus, heretofore, it has not been required to submit "lengthy documentation of modification details * * *."

Petitioner submits that "there is nothing in the record upon which the Final Rule was adopted which indicates that DOT considered the impact of the rule on Canadian-U.S. trade in vehicles, which, but for the absence of a manufacturer's certification label, otherwise complied in all respects with DOT standards." Accordingly, it concludes that the rule is arbitrary, capricious, and an abuse of discretion. Further, the petitioner contends that "the scope of the Final Rule is overly broad since in not considering the subject of non-labeled FMVSS complying Canadian market vehicles, DOT has exceeded the statutory powers of the Act." It also terms this "in direct contravention of the expressed foreign policy of the United States, to wit, the U.S.-Canada Free Trade Agreement, which has as its objective, the reduction of non-tariff barriers to trade." Petitioner cites Canada's treatment of U.S.-manufactured used vehicles as consistent with the Agreement, allowing

them entry without conformance even though speedometers and odometers are not expressed in kilometers, and bumpers are designed to a less stringent standard. Superior also argues that NHTSA violated section 605 of the Agreement by failing to provide any agency of the Canadian government with a copy of the proposal published in April 1989.

Noting that the final rule has substituted "entered value of the vehicle" as a determinant of the amount of the bond given for conformance for the statutory term "dutiable value of the vehicle", Superior argues that this "arbitrary" substitution serves to create additional non-tariff barriers to trade. Because the Agreement provides for duty-free treatment of vehicles, the duty is zero; therefore Superior argues that the "dutiable value" is zero, and hence, the vehicles are exempt from the bonding requirement of the Act.

Petitioner also sought review of "the 30 day hold period required by § 592.8", saying that it was "unnecessary and unreasonable when applied to the import of Canadian market vehicles" that require modification only of the speedometer.

Finally, petitioner believes that the final rules impose "expensive preapproval petition * * * fees" that will create a situation in which it is not economically practicable to modify the vehicles, given the small profit margin on these cars.

NHTSA understands Superior's concerns, and the agency has sought to implement the Act and regulations in a practical manner so as not to create an undue burden upon Superior and other importers of vehicles manufactured in Canada, and NHTSA will continue to do so. But the agency must work within the framework required by the 1988 Act.

The Act imposes two additional requirements upon the way Superior has done business in the past. First, in order to continue its operations, Superior must become a registered importer. The Act requires that a fee be paid to cover the costs of administering the registration program. The fee to apply to become a registered importer is \$255. This, or a similar fee, will be a cost that recurs annually if the importer chooses to renew its registration.

Second, a vehicle without the certification label of its original manufacturer, such as the GM vehicles and BMWs imported by Superior, is admissible only following a determination by NHTSA that it is capable of being modified to conform to Federal standards. The Act requires that a fee be paid to cover the costs of

making such a determination, whether that determination is made on the Administrator's own initiative, or upon petition by a manufacturer or a registered importer.

NHTSA is exploring the possibility of making a determination on its own initiative before January 31, 1990, that would cover all passenger cars manufactured in Canada that have counterparts that are certified and sold in the United States. Because of the similarity of Canadian and U.S. standards, such a determination need not be time-consuming, and would be a single determination covering a wide range of makes and model years. The fee for a single determination on the Administrator's initiative is payable by the first person who imports a vehicle covered by the determination. Should Superior apply for and receive registered importer status, and should it be the first importer to take advantage of the Administrator's determination, the total direct costs imposed by the Act upon Superior that are in addition to those presently incurred will be the registration fee plus the vehicle petition fee (plus \$4.35 per vehicle to reimburse Customs for its bond processing costs). This is a cost of business that should not exceed \$2,500 at the most, far less than the cost of a single motor vehicle, and is easily passed on to Superior's purchasers. In fact, Superior may achieve a cost reduction in the bond itself, 150 percent of the entered value of the vehicle, if the bonds presently required for its Canadian imports have exceeded this amount.

The agency rejects the contention that the 30-day hold period will add to Superior's costs. Under the present regulation, an importer is under an obligation of indefinite length not to sell the vehicle or offer it for sale until the bond has been released; under the new regulation, the vehicle may be released from custody at the end of 30 days following submission to NHTSA of certification information, if NHTSA has not released the bond or informed the importer of the need of an inspection. In actuality, where conformance with only one standard is required, NHTSA will be able to act well before the end of the 30-day period.

NHTSA wishes to provide these reassurances of a practical nature to Superior, as it has found no legal merit in any of its arguments. The 1988 Act establishes a framework for the importation of vehicles that are not originally manufactured to conform with Federal motor vehicle safety standards, and certified by their original manufacturer as conforming to those

standards. The Act establishes terms and conditions under which these vehicles may be imported, and did not establish special terms and conditions for Canadian-manufactured vehicles. Instead, it provided the Administrator with authority to admit vehicles not originally manufactured for sale in the U.S. upon a finding that they are substantially similar to vehicles manufactured for sale in the U.S., and are capable of being readily conformed to comply with the U.S. standards. Surely, this provision of the Act addresses the fact situation raised by the petitioner. NHTSA was well within its authority to adopt parts 591-594 in the manner that it did, and did not do so in a manner that was arbitrary and capricious.

Nor can NHTSA accept Superior's characterizations of the rules as contrary to the letter or spirit of the Free Trade Agreement, or that NHTSA failed to consult with Transport Canada in their adoption. The relevant portion of the Agreement, chapter ten, is directed to waivers of customs duties, and the phasing out of restrictions by Canada on the importation of used cars. Section 605, referenced by Superior, is, in actuality, section 607. It obligates each country to provide the other with copies of proposed standards-related measures and product approval procedures. Although NHTSA interprets this as relating more to rulemakings affecting the Federal motor vehicle safety standards, it did provide Transport Canada and the Canadian Embassy in Washington with informal briefings on the regulations during the time the final rules were being developed, and on their potential effect on the Canadian vehicle modifiers who had commented upon the proposals. In addition, NHTSA formally provided a copy of the proposed rule to Transport Canada during the comment period, and responded to its comments in the final rule.

Finally, there is petitioner's argument that because Canadian vehicles may enter duty-free, a bond based upon the statutory term "dutiable value" may not be imposed where the duty is zero. Requiring a bond is not inconsistent with the goal of the Free Trade Agreement that Canadian vehicles be entered duty-free. Those vehicles would still enter duty-free. However, they would do so in a way that is consistent with the goals of the 1988 amendments to the Act. The importer's obligation under the Act is to furnish "an appropriate bond" to secure conformance of a nonconforming vehicle. To adopt petitioner's argument and admit the vehicle without a bond

would be to defeat the purpose of the 1988 amendments.

As for use of the term "entered value" instead of the statutory term "dutiable value, as determined by the Secretary of the Treasury", the agency explained in the final rule (p. 40073) that the Secretary of the Treasury now uses the term "entered value" in recognition that vehicles entering from certain areas are duty-free, but regards the two phrases as identical in effect. "Dutiable value" and "entered value" both mean the economic value of the vehicle as determined by Customs. Since the statute uses the term "dutiable value," the agency is substituting that term for the term "entered value" in § 591.5(f)(1), but is also amending § 591.4 by adding a provision defining "dutiable value" as meaning "entered value, as determined by the Secretary of the Treasury." Otherwise, Superior's petition is denied in every respect for the reasons discussed above.

F. Miscellaneous

NHTSA's review of this matter brought to its attention that when the final rule was published, it inadvertently failed to place provisions regarding importation information in a separate paragraph in § 591.6 and instead included them in § 591.6(f), which relates to documents accompanying declarations by diplomats and foreign military personnel. A corrective amendment is adopted designating these provisions in § 591.6 as paragraph (g). The agency also noted that the written permission required under § 591.5(j) is from "NHTSA", whereas elsewhere it is from "the Administrator". For consistency, and to reflect the fact that the Administrator acts as the Secretary's delegate under the National Traffic and Motor Vehicle Safety Act, § 591.5(j) is also amended, to substitute "the Administrator" for "NHTSA".

Notice

The agency does not believe that any of the amendments made in this document need be preceded by notice and opportunity for comment. They are generally either technical or conforming amendments. Further, the agency needs to proceed expeditiously because of the imminence of the January 31, 1990 statutory effective date for the statutory amendments regarding the importation of nonconforming vehicles, and because of the need to print and distribute new importation forms prior to that date.

G. Impacts

The rule does not change the costs and impacts discussed in the regulatory evaluation placed in the docket during

the course of the rulemaking. NHTSA considered the impacts of the original rule, and determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation". NHTSA also determined that the rule is not significant under Department of Transportation regulatory policies and procedures. Less than 2500 motor vehicles a year are currently imported, and it is anticipated that this number will not increase. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There is no substantial effect on state and local governments. The impact upon the Federal government of the rule is that the bonding obligation of the U.S. Customs Service with respect to motor vehicle compliance with Federal standards is transferred to the Department of Transportation.

The agency also considered the effects of the rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Further, small organizations and governmental jurisdictions will not be significantly affected as they are not generally importers and purchasers of nonconforming motor vehicles.

NHTSA analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported under the rule will not vary significantly from that existing before promulgation of the rule.

The declaration and bond requirements in the rule were considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Although they are modifications of declarations presently existing in agency form HS-7, the declarations were submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). They will become effective upon approval by OMB.

The agency analyzed the rule in accordance with the principles and criteria contained in Executive Order 12612 "Federalism", and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Further, because the amendments are technical in nature, it is hereby found for good cause shown that

an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are effective upon publication in the Federal Register.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, part 591 of 49 CFR is amended as follows:

PART 591—[AMENDED]

1. The authority citation for part 591 continues to read as follows:

Authority: Public Law 100-582, 15 U.S.C. 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

2. In § 591.4, the following definition is added immediately following the definition of "Administrator":

§ 591.4 [Amended]

* * * * *

"Dutiable value" means entered value, as determined by the Secretary of the Treasury."

* * * * *

§ 591.5 [Amended]

3. in § 591.5(b), the phrase "by the manufacturer" is inserted between the words "or" and "to the equipment item".

§ 591.5 [Amended]

4. In § 591.5(e), the phrase that follows the comma appearing after the word "painting" is deleted. The comma is removed and replaced with a period.

§ 591.5 [Amended]

5. In section 591.5(f)(1), the term "entered value" is deleted and the term "dutiable value" is substituted in its place.

§ 591.5 [Amended]

6. Section 591.5(h) is revised to read:

* * * * *

(h) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because (s)he:

(i) Is a member of the personnel of a foreign government on assignment in the United States, or a member of the Secretariat of a public international organization so designated under the International Organization Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State;

(ii) Is importing the motor vehicle on a temporary basis for the personal use of the importer, and will register it through the Office of Foreign Missions of the Department of State;

(iii) Will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph; and

(iv) Will obtain from the Office of Foreign Missions of the Department of State, before departing the United States at the conclusion of a tour of duty, an ownership title to the vehicle good for export only; or

(2)(i) Is a member of the armed forces of a foreign country on assignment in the United States;

(ii) Is importing the vehicle on a temporary basis, and for the personal use of the importer;

(iii) Will not sell the vehicle to any person in the United States, other than to a person eligible to import a vehicle under this subsection; and

(iv) Will export the vehicle upon departing the United States at the conclusion of a tour of duty.

§ 591.5 [Amended]

7. In section 591.5(j), the semicolon in paragraph (j)(5), and the concluding phrase of section (j) "and the importer has received written permission from NHTSA." are removed. Paragraph (j)(5) is revised to read "(5) competitive racing events, and will not be licensed for use on the public roads."

§ 591.6 [Amended]

8. In § 591.6(f), all text after the first sentence is deleted.

9. A new § 591.6(g) is added to read:

§ 591.6 [Amended]

* * * * *

(g) A declaration made pursuant to § 591.5(j) shall be accompanied by a full and complete statement identifying the specific purpose(s) of importation, describing the use to be made of the vehicle or equipment item, and stating the estimated period of time necessary to use the vehicle or equipment item on the public roads, if any, and the disposition to be made of the vehicle or equipment item after completion of the purpose for which it was imported. If the importer does not intend to conform, export, or destroy the vehicle or equipment item not later than 3 years after its entry, the importer shall request permission in writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time, subject to the limitations of § 591.7(c).

Issued on January 31, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-2566 Filed 1-31-90; 11:09 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of fishing restrictions.

SUMMARY: NOAA issues this notice rescinding the trip limit restrictions currently in effect on nontrawl vessels fishing sablefish off the coasts of Washington, Oregon, and California in order to minimize disruption of the nontrawl fishery. This action also reminds the public of the sablefish fishing restrictions in effect during 1990 for all gears by republishing those restrictions.

DATES: 0001 hours (local time) January 31, 1990. Comments will be accepted through February 20, 1990.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT:

William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR 663.22(a) allow the Secretary of Commerce (Secretary) to reduce fishing levels to prevent or reduce biological stress in any species or species complex, consistent with the objectives and priorities of the FMP. In late 1988, the Pacific Fishery Management Council (Council) determined that the potential for biological stress for sablefish existed during 1989 and recommended that various fishing restrictions be implemented at the beginning of 1989 (for the trawl segment of the fishery) and adjusted, as necessary, during the year (for both the trawl and nontrawl fisheries) in order to prevent biological stress from occurring, while secondarily minimizing disruption of domestic fisheries and marketing practices. These fishing restrictions were implemented by

NOAA in January (54 FR 299, January 5, 1989), and further modified in April (54 FR 18658, May 2, 1989), July (54 FR 30046, July 17, 1989), and October (54 FR 41594, October 11, 1989) of 1989.

In November 1989, the Council recommended a modification of the allocation between trawl and fixed gear and a different set of sablefish fishing restrictions for 1990. Both recommendations were disapproved by NOAA (55 FR 1036; January 11, 1990). NOAA then advised the Council that the sablefish fishing restrictions in effect at the end of 1989 would carry over into 1990 pending Council reconsideration. At the end of 1989, the trip limit in effect for sablefish caught with nontrawl gear was 2,000 pounds or 20 percent of all fish on board, whichever is less, for all landings with more than 100 pounds of sablefish (54 FR 41594, October 11, 1989). This limit was implemented in October 1989 primarily to allow for the incidental catch of sablefish in longline fisheries for other species for the remainder of the 1989 fishing year.

The Council reconsidered the existing sablefish fishing restrictions at its January 10, 1990 meeting and decided to leave them in effect in 1990 (with one minor exception noted in the next paragraph) pending further review at its March 1990 meeting. The Council recommended continuing the 2,000 pound trip limit through at least the first quarter of the 1990 fishing season or until such time as the Council determined it should be removed so that the nontrawl gear fishermen could achieve the 1990 sablefish nontrawl quota. The Council's recommendation to continue the 2,000 pound trip limit was based on its concern that an increasing proportion of the nontrawl sablefish catch is occurring during the January-March time period (4 percent in 1987, 8 percent in 1988, and 24 percent in 1989) when weather conditions might make it unsafe for all but the largest vessels to fish, prices are traditionally lowest, and product quality is poorest due to soft flesh. The Council intended to review further information and analysis on when the trip limit should be lifted at its March 6-9, 1990 meeting and recommend a specific date at that time.

Also at the January 10, 1990 meeting, the Council recommended removal of the 20 percent provision because it encouraged the undesirable harvest of other species (notably fully-exploited rockfish species) in order to land sablefish, and prevented traditional harvests of small quantities of sablefish by California small dory fishermen who target directly on sablefish at this time of year.

NOAA has reviewed the Council's recommendation and has determined that retention of the 2,000 pound or 20 percent of all fish on board trip limit through the early months of the 1990 fishing season does not fulfill the same purpose as was intended when implemented in October, 1989, and is no longer consistent with the management regime under the FMP. Therefore, NODAA has determined that the trip limit should be rescinded in its entirety.

In making its decision to disapprove the Council's recommendation and to rescind the 2,000 pound/20 percent trip limit in its entirety, NOAA considered: (1) The testimony of the Council's scientific advisors which indicated that, although restrictive measures might be necessary later in the season to avoid exceeding quota, no biological or conservation basis existed to justify continuation of the measure at this time; and (2) continuation of the measure was contrary to the goals, objectives, and priorities of the FMP because it resulted in disruption of current domestic fishing patterns in the nontrawl fishery.

Accordingly, NOAA hereby rescinds the current trip limit for nontrawl gear of 2,000 pounds of 20 percent, whichever is less, for all sablefish landings of 100 pounds or more. The effect of this action will be to allow the nontrawl sablefish fishery to operate unencumbered by any trip limit restriction until such time as restrictions that meet the conservation needs of the sablefish stocks and are consistent with the FMP are recommended by the Council, approved by NOAA, and implemented by notice in the Federal Register.

All of the sablefish restrictions which carry over into 1990 from 1989, as modified by this action, are consolidated and repeated for the public's convenience and benefit as follows:

(1) *1990 Management Goal.* The sablefish fishery will be managed to achieve the 8,900 metric tons (mt) optimum yield (OY) in 1990. If the OY is reached, further landings of sablefish will be prohibited.

(2) *Tribal Fisheries.* In 1990, as in 1989, an estimate will be made of the tribal catch to the end of the year for the Washington coastal treaty tribes. It is anticipated that the tribes will regulate their fisheries so as not to exceed the estimated catch. There will be no federally imposed tribal allocation or quota. Tribal fisheries will remain open until the 8,900 mt OY is reached.

(3) *Gear Allocations.* After subtracting any tribal-imposed catch limit, the remaining OY will be allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

(4) *Trip and Size Limit—(a) Trawl gear.* (i) For trawl caught sablefish, no more than 1,000 pounds or 25 percent (by weight) of all legal fish on board in the deepwater complex (including sablefish), whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip.

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.33 percent of all legal fish on board in the deepwater complex other than sablefish.

(A) "Deep water complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and arrowtooth flounder (*Atheresthes stomias*).

(ii) Of those sablefish taken with trawl gear under paragraph (4)(a)(i) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

(b) *Nontrawl gear.* No trip or size limit restrictions presently apply to the nontrawl fishery.

(c) All weights and percentages are based on round weights or round weight equivalents. Percentages apply only to legal groundfish on board. Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 663, the Magnuson Act, any notice issued under subpart B of part 663, or any other regulation or permit promulgated under the Magnuson Act. If sablefish are processed, refer to paragraph (e).

(d) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(e) For processed ("headed") sablefish:

(i) The minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and

(ii) The product recovery ratio (PRR) established by the state where the fish is or will be landed is used to convert the processed weight to round weight for purposes of applying the trip limit.

Note: The Federal trip limit for processed ("headed") sablefish is based on the product recovery ratios (PRRs) used by Washington, Oregon, or California, as in the past. It should be noted that the state PRRs may differ and fishermen should contact fishery enforcement

officials in the state where the fish will be landed to determine that state's official PRR.

(f) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(5) The fishery management area for this species is the exclusive economic zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All sablefish possessed 0-200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 3-200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(6) Pursuant to § 663.22(a), the regulations at § 663.27(b)(3) are adjusted until further notice.

(7) Nontrawl (fixed) gear includes set nets (gill and trammel nets), traps or pots, longlines, commercial vertical hook-and-line gear, troll gear.

(8) Trawl gear includes bottom trawls, roofer or bobbin trawls, pelagic trawls, and shrimp trawls.

Classification

This action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see ADDRESSES) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative land environmental impacts of this Notice of Rescission of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare and Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10 because the alternatives and their impacts have not changed significantly.

This action is taken under the authority of 50 CFR 663.22 and 663.23, and is in compliance with Executive Order 12291. It is covered by the Regulatory Flexibility Analysis prepared

for the authorizing regulations, and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive order 12612.

Section 663.23 states that any notice issued under this section will not be effective until 30 days after publication in the *Federal Register*, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. The current nontrawl trip limit prevents many large nontrawl vessels from beginning their fishing season and this is resulting in loss of income. If this lost fishing opportunity is not restored immediately, income will continue to be lost. Consequently, further delay of this action is impracticable and contrary to the public interest, and for good cause this action is taken in final form effective January 31, 1990.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-2528 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0660-89]

RIN 1545-AN75

Withholding of Tax on Nonresident Aliens

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to a temporary regulation.

SUMMARY: This document contains a proposed Income Tax Regulation relating to withholding of tax on nonresident aliens. The proposed regulation would clarify that withholding under section 1441 is required with respect to a payment to a nonresident alien individual from any employees' trust described in section 401 (a) of the Internal Revenue Code of 1986 (the "Code") that is exempt from tax under section 501(a) of the Code if an election of no withholding under section 3405(a)(2) or (b)(3) is in effect. In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing a temporary regulation relating to these matters. The text of that temporary regulation also serves as the comment document for this proposed rulemaking.

DATES: This regulation is proposed to be effective for payments made February 26, 1990. Written comments and requests for a public hearing must be delivered or mailed April 6, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, (Attention: CC:CORP:T:R, [INTL-0660-89]), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol P. Tello of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue, NW, Washington, DC 20224 (Attention: CC:CORP:T:R) ([INTL-0660-89])(202-377-9059, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulation published in this issue of the Federal Register adds § 1.1441-4T to 26 CFR part 1. The final regulation that is proposed to be based upon this temporary regulation would amend 26 CFR part 1. For the text of the temporary regulation, see [T.D. 8288] published in the Rules and Regulations portion of this issue of the Federal Register.

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Administrator of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before adopting this proposed regulation, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rule. Notice of the time and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of this regulation is Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing this regulation.

Federal Register

Vol. 55, No. 24

Monday, February 5, 1990

List of Subjects in 26 CFR 1.1441-1 to 1.1465-1

Income taxes, Aliens, Foreign corporations.

Proposed Amendment to the Regulations

The temporary regulation, [T.D.8288], published in the Rules and Regulations portion of this issue of the Federal Register, also is hereby proposed as a final regulation under section 1441 of the Internal Revenue Code of 1986.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 90-2489 Filed 2-2-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[7-89-61]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Vero Beach, the Coast Guard is considering adding regulations governing the Merrill Barber drawbridge at Vero Beach by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 22, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Ave. Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, Room 484, 900 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 am and 4:00 pm, Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Walt Paskowsky, project officer, and LCDR D. G. Dickman, project attorney.

Discussion of Proposed Regulations

The Merrill Barber drawbridge currently has regulations which provide for three closed periods on weekdays between 7:45 am and 9 am, 12 noon to 1:15 pm, and 4 pm to 5:15 pm during which the bridge opens only at 8:30 am, 12:30 pm and 4:30 pm. From 1 December through April 30, in addition to this schedule, Monday through Friday except federal holidays, the bridge opens only on the hour, quarter hour, half hour and three quarter hour between 7 am and 6 pm. The proposed addition would extend this 15 minute schedule to include the months of October, November and May. This schedule would then cover the periods of the seasonal vessel migration during which the number of bridge openings increases sharply. It would insure a sufficient interval between bridge openings to reduce their impact on vehicular traffic.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979)

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1g.

2. Section 117.261(n) is revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS**§ 117.261 Atlantic Intracoastal Waterway, St Mary's River to Key Largo.**

(n) Merrill Barber (SR 60) bridge, mile 951.9 at Vero Beach. The draw shall open on signal; except that from 7:45 am to 9 am, 12 noon to 1:15 pm, and 4 pm to 5:15 pm, Monday through Friday, except federal holidays, the draw need open only at 8:30 am, 12:30 pm, and 4:30 pm. From October 1 through May 31, from 7 am to 6 pm, Monday through Friday except federal holidays and as provided above the draw need open only on the hour, quarter-hour, half-hour and three quarter-hour.

Dated: January 18, 1990.

Martin H.D. Nell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-2563 Filed 2-2-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 89-628, RM-6850]

Radio Broadcasting Services; Kachina Village and Winslow, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Desert West Air Ranchers Corporation, permittee of Station KTDX(FM), Channel 286C, Winslow, Arizona, seeking to change the community of license for Channel 286C from Winslow to Kachina Village, Arizona, and to reclassify its permit to specify operation on Channel 286C2 at the latter community. Coordinates used for this proposal are 35-14-26 and 111-35-48.

DATES: Comments must be filed on or before March 22, 1990, and reply comments on or before April 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-628, adopted December 28, 1989, and released January 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensing, Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-2498 Filed 2-2-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-16, RM-7119]

Radio Broadcasting Services; Ogden, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a document filed by Kaw Valley Broadcasting Company, requesting the substitution of FM Channel 278C2 for Channel 278A at Ogden, Kansas. Petitioner also requests modification of its license for Station KQLA, Channel 278A, to specify Channel 278C2. The coordinates for Channel 278C2 are 39°20'20" and 96°38'32".

DATES: Comments must be filed on or before March 22, 1990, and reply comments on or before April 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Nathaniel F. Emmons, Rachel D. Cramer, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036.

Kaw Valley Broadcasting Co., 5008 Frontage Road, Rt. 1, Box 104, Manhattan, Kansas 66502.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-16, adopted January 19, 1990, and released January 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 90-2493 Filed 2-2-90; 8:45 am]
BILLING CODE 6712-01-M

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 90-2496 Filed 2-2-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 89-600]

Cable Hearings

AGENCY: Federal Communications Commission.

ACTION: Notice; public hearing.

SUMMARY: Federal Communications Commission will hold three field hearings as part of its comprehensive study on the status of the cable industry's operations since enactment of the Cable Communications Policy Act of 1984.

Hearing Dates: February 12, 1990, March 2, 1990, and March 15, 1990.

Hearing Addresses/Oral Presentation:

The first hearing will be held in Los Angeles, California at City Hall, 200 North Spring Street from 9:30 a.m. until no later than 5:30 p.m. The second hearing will be held in Orlando, Florida, Orlando City Council Chambers at City Hall, 400 South Orange Avenue from 9:30 a.m. until no later than 5:30 p.m. The third and final hearing will be held in the Moot Court Room at Washington University Law School, One Brookings Drive, St. Louis, Missouri, from 9:30 a.m. until no later than 5:30 p.m. Parties wishing to make oral presentations at the St. Louis hearing should submit written requests by close-of-business, Friday, February 15, 1990 to the Office of Plans and Policy, FCC, 1919 M Street, NW., Room 822, Washington, DC 20554, Attention: Jim Hudgens.

Speakers' remarks or draft testimony should be submitted by Thursday, March 8, 1990 to the Office of the Secretary, FCC, Rm. 222, 1919 M Street, NW., Washington, DC 20554. Any filings should be directed to Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Hudgens, Office of Plans and Policy, (202) 653-5940, or Michele Farquhar, Office of General Counsel (202) 632-

47 CFR Part 73

[MM Docket No. 89-629, RM-7031]

Radio Broadcasting Services; LaFayette, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radix Broadcasting, Inc., ("petitioner") seeking the allotment of Channel 298A to LaFayette, Georgia, as that community's first local FM service. The coordinates for the proposal are North Latitude 34°44'08" and West Longitude 85°15'32".

DATES: Comments must be filed on or before March 22, 1990, and reply comments on or before January 30, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lynn S. Gwyn, President, Radix Broadcasting, Inc., P.O. Box 746, LaFayette, GA 30728.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-629, adopted December 28, 1989, and released January 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

7020, for information about the hearings and Lorrie Secrest at (202) 632-5050 for media coverage information.

SUPPLEMENTARY INFORMATION: On January 30, 1990, the Commission released the following Public Notice notifying the public that its third and final cable hearing is to be held in St. Louis, Missouri, and that the focus of this hearing will be the impact of the Cable Act on local cable regulation, including city/cable relations and service quality. The notice informs interested parties of the procedures to be followed for the third hearing if they wish to make oral presentations and then the procedures to be followed if they are selected as speakers. Parties may submit written comments in the Commission's pending Cable Inquiry by March 1, 1990 and reply comments by April 2, 1990, pursuant to the procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules.

Robert L. Pettit,
General Counsel.

January 30, 1990.

The Federal Communications Commission announced on December 28, 1989, that it will convene three field hearings as part of its comprehensive study on the status of the cable industry's operations since enactment of the Cable Communications Policy Act of 1984. See Notice of Inquiry in MM Docket No. 89-600, FCC 89-345 (released December 29, 1989) ("Cable Inquiry"). As previously announced, these hearings will be in Los Angeles, California on February 12, 1990;

Orlando, Florida on March 2, 1990; and St. Louis, Missouri on March 15.

The third and final hearing is scheduled for Thursday, March 15, 1990, in the Moot Court Room at Washington University Law School, One Brookings Drive, St. Louis, from 9:30 a.m. until no later than 5:30 p.m. The focus of the St. Louis hearing will be the impact of the Cable Act on local cable regulation, including city/cable relations and service quality. In addition, we will seek comment on related cable matters from local, state, and Federal officials and other interested parties.

Parties wishing to make oral presentations at the St. Louis hearing should submit written requests by close-of-business, Thursday, February 15, 1990, to the Office of Plans and Policy, FCC, 1919 M Street, NW., Room 822, Washington, DC 20554, Attention: Jim Hudgens. Such requests should clearly identify the speaker, the organization represented (if any), experience and training relevant to the issues to be discussed, particularly as they relate to the cable TV industry and the Commission's pending Cable Inquiry, and the specific topic or topics to be discussed. Depending on the number of requests, it may be necessary to limit the number of presenters. If so, we will endeavor to select speakers for the hearing so as to obtain a broad and informed viewpoint. In order to allow time for oral discussion and dialogue, presentations will be limited to five minutes for group representatives and three minutes for speakers representing themselves or single firms. Interested parties are also encouraged to

coordinate and/or consolidate their presentations to prevent duplication. All speaker requests will be reviewed and those selected as panelists will be notified.

An original and 10 copies of all selected speakers' remarks or draft testimony, including a summary of no more than two pages, should be submitted by Thursday, March 8, 1990 to: Office of the Secretary, Federal Communications Commission, room 222, 1919 M Street, NW., Washington, DC 20554, Ref: MM Docket No. 89-600.

One additional copy should also be submitted to Jim Hudgens, Office of Plans and Policy, FCC, Room 822. Information submitted at all of the field hearings will be included as a matter of public record in the Commission's pending Cable Inquiry (MM Docket No. 89-600). In addition, all interested parties may submit written comments in the Commission's pending Cable Inquiry by March 1, 1990 and reply comments by April 2, 1990, pursuant to the procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (e.g., six copies of formal comments and one copy of informal comments must be submitted to the Office of the Secretary).

The precise format and speaker schedule for the St. Louis hearing will be specified in a further Public Notice. All of the cable hearings are open to the public. For further information about the hearings, please contact Jim Hudgens at (202) 653-5940. The contact for media coverage is Lorrie Secrest at (202) 632-5050.

[FR Doc. 90-2567 Filed 2-2-90; 8:45 am]

BILLING CODE 8712-01-M

Notices

Federal Register

Vol. 55, No. 24

Monday, February 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Praine Creek Timber Sale; Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber and build roads in the Praine, Waugh, and unnamed drainages. The drainages are located approximately 35 air miles south of Hamilton, Montana. Part of the proposed timber harvest and road construction are proposed within the Allan Mountain roadless area (#01946).

DATES: Written comments concerning the scope of the analysis must be received on or before March 22, 1990.

ADDRESSES: Send written comments to District Ranger, Sula Ranger District, Sula, Montana 59871.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Kurtis Fruit, Sale Preparation Forester, Sula Ranger District, Phone: (406) 821-3201.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the Sula Ranger District of the Bitterroot National Forest in Ravalli County, Montana. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (goals, objectives, standards and guidelines, and management area direction) in achieving the desired future condition for this area. The purpose and goals for the proposed action are to: (1) To contribute to local needs for timber; (2) maintain a continuous supply of timber in the future through improvement of vigor and growth of immature timber stands and conversion of diseased timber stands to healthy and productive timber stands; (3) provide

additional forage for elk on the big game winter range; (4) maintain and protect existing improvements and resource productive potential; and (5) manage riparian areas to feature riparian-dependent resources. The process used in preparing the Draft EIS will include: 1. Identification of potential issues. 2. Identification of issues to be analyzed in depth. 3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis. 4. Identification of additional reasonable alternatives. 5. Identification of potential environmental effects of the alternatives. 6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of this publication in the **Federal Register**.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The potentially affected area is within the following management areas:

Management Area 1: Emphasize timber management, livestock and big-game forage production, which provide an added benefit of access for roaded dispersed recreation activities and mineral exploration. Assure minimum levels of visual quality, old growth, and habitat for other wildlife species.

Management Area 2: Optimize elk winter range habitat using timber and other vegetative management practices. Access will provide for mineral exploration and roaded dispersed recreation activities. Provide moderate levels of visual quality, old-growth habitat for other wildlife species, and livestock forage.

Management Area 3a: Maintain the partial retention visual quality objective and manage timber. Emphasize roaded dispersed recreation activities, old growth, and big-game cover. Provide moderate levels of timber, livestock forage, and big-game forage. Restrict road density where necessary to meet visual objectives but provide access as needed for mineral exploration.

Management Area 3b: Manage riparian areas to maintain flora, fauna,

water quality and water-related recreation activities. Emphasize water and soil protection, dispersed recreation use, visual quality, and old growth. Provide low levels of timber harvest, livestock forage, and big-game forage on fisheries riparian areas. Roading in riparian areas will be restricted to meet water quality and fish objectives.

Management Area 8a: Manage at the minimum level for elk security, old growth, and habitat diversity. Maintain existing uses and facilities. Roads may be built through 8a areas to access adjacent suitable and roadable timberlands.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Allan Mountain roadless area would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and in the review of the Draft EIS (April, 1990).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The draft environmental impact statement (DEIS) is expected to be available for public review in June, 1990. After 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental

impact statement (FEIS). The FEIS is scheduled to be completed by February, 1991. The Forest Service will respond to the comments received in the FEIS. The Bitterroot Forest Supervisor who is the responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the *Federal Register*.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement on the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The responsible official is Bertha Gillam, Forest Supervisor of the Bitterroot National Forest.

Dated: January 26, 1990.

Bertha C. Gillam,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 90-2509 Filed 2-2-90; 8:45 am]

BILLING CODE 3410-11-M

**Buck-Little Boulder Timber Sale;
Bitterroot National Forest, Ravalli
County, MT**

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber and build roads in the Buck Creek, Ditch Creek, Rombo Creek, Slate Creek, and Little Boulder Creek drainages. These drainages are located approximately 36 air miles southwest of Hamilton, Montana. Part of the proposed timber harvest and road construction is proposed within the Allan Mountain Roadless Area (01946).

DATES: A public meeting will be held in Hamilton, Montana during February or March of 1990. The finalized meeting date will be announced in local Hamilton newspapers and through individual contact with interested local publics. Written comments concerning the scope of the analysis must be received on or before March 22, 1990.

ADDRESSES: Send written comments to District Ranger, West Fork Ranger District, Darby, Montana 59801.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Jim Aronson, Timber Management Assistant, West Fork Ranger District, Phone: (406) 821-3269.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the West Fork Ranger District of Bitterroot National Forest in Ravalli County, Montana. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (goals, objectives, standards and guidelines, and management area direction) in achieving the desired future condition for this area. The purpose and goals for the proposed action are: (1) To contribute to local needs for timber; (2) to maintain a continuous supply of timber in the future through improvement of vigor and growth of immature timber stands and conversion of diseased timber stands to healthy and

productive timber stands; (3) to construct roads required for harvesting the timber and implement measures to reduce erosion on existing roads; (4) to improve elk habitat effectiveness through road closures of existing and newly constructed roads; and (5) to provide additional funding for consideration of other management opportunities such as construction of a hiking trail and trail head and removal of fish passage barriers.

The process in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of this publication in the *Federal Register*. A public meeting will be held in Hamilton, Montana during February or March of 1990 to obtain public input and provide additional information concerning planned management activities.

The Forest Plan provides the overall guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The potentially affected area is within the following management areas:

Management Area 1: Consists of lands designated for timber production. The management goal is to emphasize timber management, livestock and big-game forage production and assure a minimum level of visual quality, old growth, and habitat for other wildlife species. Extensive vegetative manipulation with associated new road construction will occur in this management area within guidelines provided by the Bitterroot Forest Plan.

Management Area 2: Consists of lands designated primarily for big-game wildlife use. The goal is to optimize elk winter range habitat using timber and other vegetation management practices while providing moderate levels of visual quality, old-growth habitat for

other wildlife species, and livestock forage. Vegetation manipulation and road construction will occur within guidelines set by wildlife objectives.

Management Area 3a: Consists of lands designated primarily for visual quality management. The goal is to maintain the partial retention visual quality objective and manage timber. Roaded dispersed recreation activities, old growth, and big-game cover are emphasized. Vegetation manipulation with associated road construction will occur provided activities are subordinate to the natural landscape.

Management Area 3b: Consists of lands designated primarily for riparian area management. The goal is to manage riparian areas to maintain flora, fauna, water quality and water-related recreation activities. Emphasis is placed upon water and soil protection, dispersed recreation use, visual quality, and old growth. Only limited vegetative manipulation will occur in this management area.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Allan Mountain roadless area would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, this EIS will disclose the analysis of site specific mitigation measure and their effectiveness.

Public participation will be important during this analysis. People may visit with Forest Service officials at any time during the analysis period and prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and in the review Draft EIS (April, 1990).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The draft environmental impact statement (DEIS) is expected to be available for public review in April, 1990. After a 45-day public comment

period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by July, 1990. The Forest Service will respond to the comments received in the FEIS. The Bitterroot Forest Supervisor who is the responsible official for this EIS will make a decision regarding the proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in the Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the *Federal Register*.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts.

Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the

National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The responsible official is Bertha Gillam, Forest Supervisor of the Bitterroot National Forest.

Dated: January 26, 1990.

Bertha C. Gillam,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 90-2510 Filed 2-2-90; 8:45am]

BILLING CODE 3410-11-M

Inyo National Forest; Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 9 a.m. on March 16, 1990, at the Presbyterian Church in Lee Vining, California. The agenda will include:

1. General Update on such items as land exchanges, visitor center construction, visitor center exhibits including audio-visual production, summary of past activities, upcoming activities, and water issues.
2. Presentation and discussion of a proposal to list Mono Lake as a Western Hemispheric Shorebird Reserve.
3. Presentation of the Comprehensive Management Plan, including the resolution of the critical issues.

The meeting will be open to the public. Persons who wish to attend and make oral presentations should notify Dennis W. Martin, Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California, 93514, telephone: (619) 873-5841. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comments.

Dated: January 26, 1990.

Dennis W. Martin,

Forest Supervisor and Chairman.

[FR Doc. 90-2500 Filed 2-2-90; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene a meeting on Monday, February 26, 1990 from 1:00 p.m. to 3:00 p.m. at the Executive Tower Inn, 1405 Curtis Street,

Denver, Colorado, 80202. The purpose of the meeting is to plan Committee activities and discuss project ideas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Gwendolyn Thomas or Philip Montez, Director of the Western Regional Division [213] 894-3437, [TDD 213/894-0508]. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 29, 1990.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 90-2507 Filed 2-2-90; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon on March 2, 1990, at the Offices of Walther, Key, et al, Conference Room, 3500 Lakeside Court, Suite 200, Reno, Nevada 89509. The purpose of the meeting is to plan Committee projects and future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Margo Piscevich or Philip Montez, Director of the Western Regional Division [213] 894-3437, [TDD 213/894-0508]. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 29, 1990.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 90-2505 Filed 2-2-90; 8:45 am]

BILLING CODE 6335-01-M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations

of the U.S. Commission on Civil Rights, that the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on February 27, 1990, at the airport Holiday Inn, 1659 West North Temple, Salt Lake City, Utah 84116. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert E. Riggs or Philip Montez, Director of the Western Regional Division [213] 894-3437, [TDD 213/894-0508]. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 29, 1990.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 90-2506 Filed 2-2-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: School Enrollment Report

Form Number: P-4

Agency Approval Number: 0607-0459

Type of Request: Revision of a currently approved collection

Burden: 20 hours

Number of Respondents: 40

Avg Hours per Response: 30 minutes

Needs and Uses: The Census Bureau prepares estimates of state population and migration patterns using data that educational agencies compile and publish annually on enrollment by grade. This survey is used to obtain the data from those 40 agencies which do not publish in time for us to use their reports. Other Government agencies use the population estimates to allocate funds from various Federal programs.

Affected Public: State or local governments

Frequency: Annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 25, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-2583 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: 1990 Decennial Census Post Enumeration Survey Follow-Up Questionnaire

Form Number(s): D1301

Agency Approval Number: None

Type of Request: New collection

Burden: 12,526 hours

Number of Respondents: 67,750

Avg Hours per Response: 12 minutes

Needs and Uses: The Post Enumeration Survey (PES) is designed to evaluate the completeness of the 1990

Decennial Census of Population and Housing. The Bureau of the Census will use the Follow-Up Questionnaire to gather names and demographic characteristics to enable matching of PES and Census data. Without the follow-up survey, Census could not assign final match status with certainty and obtain estimates of coverage error from the PES

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622,

14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 25, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-2584 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-07-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO)

Title: Patent Processing Requirements
Form Number: OMB Control Number

0651-0011

Type of Request: Extension of the expiration date

Burden: 896,000 responses; 352,098

reporting hours. Average hours per response is slightly less than .4 of an hour

Needs and Uses: The information is used to process patent applications and assess the propriety of granting United States patents

Affected Public: Any individual or organization applying for a patent

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Robert Veeder, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-2585 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 9118-01 et al.]

Decision; Computech Ispat Limited and Computech International; Barin Nath Chatterjee, Santosh K. Rateria and E. Erman

In the matter of:	Docket Nos.
Barin Nath Chatterjee, individually and doing business as Computech Ispat Limited, and, Computech International, with addresses at 507 Jodhpur Park, Calcutta 68, India, and, 77/2A Hazra Road, 4th Floor, Calcutta, India, and, 72 rue Pierre Curie, 91420 Morangis, France, and.....	9118-01 9118-02 9118-03
Santosh K. Rateria, individually and doing business as Computech Ispat Limited, and, Computech International, with addresses at 507 Jodhpur Park, Calcutta 68, India, and, 77/2A Hazra Road, 4th Floor, Calcutta, India, and, 105 Southern Avenue, Calcutta, India, and	9121-01 9121-02 9121-03
E. Erman, individually and doing business as Computech Ispat Limited, and, Computech International, with addresses at 507 Jodhpur Park, Calcutta 68, India, and, 77/2A Hazra Road, 4th Floor, Calcutta, India, and, J.L. Pawiyaten No. 9, Surabaya, Indonesia.....	9120-01 9120-02 9120-03

Respondents

Decision and Order

On June 6, 1989, the Department issued a Charging Letter against Barin Nath Chatterjee (Chatterjee), individually and doing business as Computech Ispat Limited and Computech International, and on June 14, 1989 issued separate Charging Letters against Santosh K. Rateria (Rateria) and E. Erman (Erman), individually and both doing business as Computech Ispat Limited and Computech International (referred to collectively as respondents). The three separate Charging Letters alleged that respondents violated the provisions of §§ 787.3(b), 787.4, 787.5, and 787.6 of the Export Administration Regulations (codified at 15 CFR parts 768-799 (1989)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the Act), by reexporting a VAX 11/780 computer from Singapore to India without the reexport authorization which they knew or had reason to know was required by § 774.1 of the Regulations, and by submitting an ITA Form 629P Statement by Ultimate Consignee and Purchaser in connection with an application for an export license

to the Department, wherein they made false or misleading statements and representations of material fact to the Department.

Respondents filed answers to the Charging Letters. After the respondents filed their answers, the Department and the respondents entered into a Consent Agreement whereby they agreed to settle the matters by Chatterjee's paying to the Department a civil penalty of \$100,000 and by a denial of respondents' export privileges for 5 years, portions of which are suspended as set forth below.

The parties thereupon submitted a Consent Agreement to the Administrative Law Judge, that he approved, and recommended that I approve it as well. The Administrative Law Judge submitted a Decision and Order approving the Consent Agreement. Because the Decision and Order included a discussion not relevant to the approval of the Consent Agreement by the Administrative Law Judge, the Decision and Order of the Administrative Law Judge is modified by striking all that appears before the Order itself.

I hereby approve the Consent Agreement.

Therefore, it is ordered:

First, (1) Barin Nath Chatterjee, individually and doing business as Computech Ispat Limited and Computech International, with addresses at 507 Jodhpur Park, Calcutta 68, India, 77/2A Hazra Road, Fourth Floor, Calcutta, India, and 72 rue Pierre Curie, 91420 Morangis, France;

(2) Santosh K. Rateria, individually and doing business as Computech Ispat Limited and Computech International, with addresses at 507 Jodhpur Park, Calcutta 68, India, 77/2A Hazra Road, Fourth Floor, Calcutta, India, and 105 Southern Avenue, Calcutta, India; and

(3) E. Erman, individually and doing business as Computech Ispat Limited and Computech International, with addresses at 507 Jodhpur Park, Calcutta 68, India, 77/2A Hazra Road, Fourth Floor, Calcutta, India, and J.L. Pawiyaten No. 9, Surabaya, Indonesia; collectively referred to herein as respondents, and all their successors, assignees, officers, partners, representatives, agents and employees, shall be denied, for a period of five years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which any

respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related person, or whereby any respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license,

Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any respondent or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by Section 788.16(c) of the Regulations, the denial period herein provided for against respondents shall be suspended as to each respondent as follows:

(1) Chatterjee—for a period of four years and six months, beginning six months from the date of entry of this Order;

(2) Rateria and Erman—for a period of five years beginning from the date of entry of this Order;

(3) Computech Ispat Limited and Computech International—for a period of four years and nine months, beginning three months from the date of entry of this Order

and shall thereafter be waived provided that, during the period of applicable suspension, (a) respondents have committed no violation of the Act or any regulation, order or license issued under the Act, and (b) Computech Ispat Limited, the owner and operator of the computer that is the subject of the administrative proceedings, allows routine inspections of the computer by United States authorities on its premises in India, provided that such inspections do not disturb computer operations.

Second, a civil penalty in the amount of \$100,000 is assessed against Barin Nath Chatterjee. Chatterjee shall pay to the Department the sum of \$50,000 within 30 days from the date of the entry of this Order. Within one year after the date of entry of this Order, Chatterjee will make a second payment to the Department of \$50,000. Each payment shall be made in the manner specified in the attached instructions.

Third, that the Charging Letters, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon each respondent and published in the *Federal Register*.

This constitutes final agency action in this matter.

Dated: January 29, 1990.

Dennis Kloske,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Byron Keith Huffman, Jr., Esq., Webster & Sheffield, 2000 Pennsylvania Avenue NW., Suite 7400, Washington, DC 20006.

Appearance for Agency: Louis K. Rothberg, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement¹

This proceeding against Respondent Barin Nath Chatterjee (Chatterjee), individually and doing business as Computech Ispat Limited and Computech International, was initiated with the issuance of a charging letter on June 6, 1989. On June 14, 1989, two similar charging letters were also issued against Respondent Santosh K. Rateria (Rateria) and Respondent E. Erman (Erman), individually and doing business as Computech Ispat Limited and Computech International (referred to collectively as Respondents). The violations alleged in all three letters assert a conspiracy relating to the same events, resulting in the consolidation of these cases. These letters were issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended (the Act), and the Export Administration Regulations (the Regulations).

The letters alleged that from November 1985 to July 1987, Respondents violated §§ 787.3(b), 787.4, 787.5, and 787.6 of the Regulations by reexporting a VAX 11/780 computer from Singapore to India without the reexport authorization which they knew or had reason to know was required by § 774.1 of the Regulations, and by submitting an ITA Form 629P Statement by Ultimate Consignee and Purchaser in connection with an application for an export license to the Agency, wherein they made false or misleading statements and representations of material fact to the Agency.

¹ Pursuant to the Secretary's order *In the Matter of A.M.Y. Enterprises*, 54 FR 47801 (November 17, 1989) the Order here does not provide findings of facts, conclusions of law, nor findings of violation. Citing *In the Matter of Bernardus Johannes Jozef Smit*, 54 FR 39027 (Sept. 22, 1989) where it was held:

That "neither the Act nor the Regulations require that a finding of violation be made in order to impose sanctions under a consent agreement" (54 FR at 39028). [T]here is no requirement for a finding of violation to impose a civil penalty in consent proceedings brought pursuant to § 788.17(a)(2).

Respondents filed answers to the charging letters. After the Respondents filed their answers, the Agency and the Respondents entered into a Consent Agreement. To settle the admitted violation of §§ 787.3(b), 787.4, 787.5, and 787.6 of the Regulations, as alleged in the charging letter, Chatterjee consented to pay a civil penalty of \$100,000 and each of the Respondents consented to a denial of export privileges for 5 years, portions of which are suspended as set forth below.

Beginning on the date of final Agency action, the denial of export privileges set forth above is to be suspended, as authorized by § 788.16(c) of the Regulations, and as stated in the following Order provided that Respondents commit no further violations of the Export Administration Act, the Regulations, or the Final Order issued in this proceeding.

Discussion

Upon examination of the record in these cases, following submission of the Consent Agreement, it appeared that the \$100,000 civil penalty was unusually high. A comparison with other cases adjudicated since the Act was amended in 1985 reflected that the amount was approximately three times the average of consent settlement cases during the same period. The parties were ordered to show cause for approval of the proposed settlement. The submissions represent that the settlement proposed was reached after intense negotiations and reflect substantial compromise. The individual respondents are in Europe and India, making communication difficult and costly. A plea bargained criminal conviction of Computech Ispat Limited, in settlement of proceedings initiated in the United States District Court in Houston, Texas against all of these Respondents, some or all of whom had been initially incarcerated and later released on bond, resulted in a guilty plea by the Computech Ispat Limited and a fine against that company only, of \$17,500. As a result the criminal charges against the individuals were dropped. Agency Counsel asserts that the holding of the United States Supreme Court in *United States v. Halper* 109 S. Ct. 1892 (1989) is not applicable here because the individuals were not convicted in the criminal proceeding. I note, however, that they were charged here individually and doing business as Computech Ispat Limited. Therefore the conviction clearly relates to the company aspect of their individual activities. That the criminal plea was *sub nomine* by the corporation through which they are charged here, that does not exculpate them here. I do not see the situation as significantly

different than that in a pending penalty case where the conviction of an officer is asserted by Agency Counsel as binding upon and chargeable against a Corporate Respondent.

The show cause submission provides some additional details on the incidents, but also raises further questions.

The most significant of these remains the appropriateness of the proposed civil penalty. Agency Counsel's representations, which are not new, to the effect that each of these export compliance cases is unique and therefore there need be no standard, is preposterous. For almost five decades export control was shrouded in secrecy and immune from judicial review. Some vestiges still remain, principally in the Agency and Counsel attitudes. These cases are as routine and run of the mill as any group processed administratively or judicially. The adamant attitude of Counsel—attributable to the client agency, as well, is simply at variance with elemental fairness. Each Agency Counsel appears to pull out of the air whatever number he or she considers on a given day, and that is the rule. That cannot be.

This subject has been addressed before. The Administrative Conference of the United States in its Reports and Recommendations, which have been adopted by this Department, lay out the Government policy as well as the legal requirement for standards. Agency Counsel's assertions that these cases are unique and that there need be no standards provide no basis for evaluating sanctions proposed, leaving nothing for this office to adjudicate.

This particular case is also significant in that Agency Counsel's representation to the effect that the unlicensed export of a sophisticated VAX 11/780 Computer which can be used in nuclear testing, to India via Singapore, appears to conflict with the Congressionally defined purpose for civil penalties. From the outset of their statutory authorization in 1962 civil penalties were to be imposed in minor matters not involving national security. Nuclear proliferation is hardly a matter outside national security interests. The emphasis on a substantial civil penalty with almost totally suspended revocation of export privileges, is an exceptional approach.

Nevertheless, there is a representation by Agency Counsel in the response to the Order to Show Cause which provides some support for approval of the \$100,000 civil penalty. The comment " * * * that the settlement amount of \$100,000 approximates the profit realized by the Respondents on the

deal", provides such link. Taking the profit out of the transaction has been a legitimate consideration in arriving at civil penalty assessments, although it is usually a part of the criminal sanction when such process is present as it was here. With some residual concern that this may be a Pontius Pilate washing of the hands; I nevertheless approve and pass the matter to the delegated Secretarial official for final determination.²

Order

- I. For a period of 5 years from the date of the final Agency action, Respondents: Barin Nath Chatterjee, 72 rue Pierre Curie, 91420 Morangis, France, and Santosh K. Rateria, 105 Southern Avenue, Calcutta, India, and, E. Erman, J.L. Pawiyaten No. 9, Surabaya, Indonesia, individually and doing business as Computech Ispat Limited and Computech International, 507 Jodhpur Park, Calcutta 68, India, 77/2A Hazra Road, 4th Floor, Calcutta, India

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to [the Act] and the Regulations.

- II. Commencing on the date of the final Agency action, the denial of export privileges set forth in Paragraph I, above, shall be suspended, in accordance with Section 788.16 of the Regulations, to each Respondent as follows:

Chatterjee—for a period of 4 years, 6 months beginning six months from the date of entry of this Order;

Rateria and Erman—for a period of 5 years beginning from the date of entry of this Order;

Computech Ispat Limited and Computech International—for a period of 4 years, 9 months beginning three months from the date of entry of this Order;

and shall thereafter be terminated, provided that Respondent has committed no further violation of the Act, the Regulations, or the final order in

² A notice is being transmitted removing this office from the approval of settlements in these matters. Since no factual determination remains, there is no adjudication. Rather a policy determination, not within the limited statutory function of Administrative Law Judges appears to be involved.

this proceeding; further, during the applicable suspension period, Computech Ispat Limited, the owner and operator of the computer that is the subject of the administrative proceedings, allows routine inspections of the computer by United States authorities on its premises in India, provided that such inspections do not disturb computer operations.

A civil penalty in the amount of \$100,000 is assessed against Barin Nath Chatterjee. Chatterjee shall pay to the Agency the sum of \$50,000 within 30 days of the date of the entry of this Order. Within one year after the date of entry of this Order, Chatterjee will make a second payment to the Agency of \$50,000. Each payment shall be made in the manner specified in the attached instructions.

The charging letters, the Consent Agreement, and this Order shall be made available to the public. A copy of this Order shall be served upon each Respondent and published in the *Federal Register*.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates,

in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. app. 2412(c)(1)).

Dated: December 29, 1989.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 90-2586 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-DT-M

Virginia Beach, VA; telephone: (804) 481-9000, or 800-468-2722. The Council will begin the meeting on February 28 at 8 a.m., and will recess at 5 p.m. It will reconvene on March 1 at 8 a.m., and adjourn at 3 p.m.

The Council will discuss Amendment #1 to the Summer Flounder Fishery Management Plan (FMP), discuss enforcement of other FMPs, and also discuss other fishery management and administrative matters. The Council may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: January 30, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-2574 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled a public meeting of the Pacific Northwest Crab Industry Advisory Committee. The Committee will begin meeting on February 8, 1990, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE, Building 4, Room 2039, Seattle, WA. If necessary, the Committee may continue the meeting on February 9.

The Committee will review the 1990 Bering Sea/Aleutian Islands king and Tanner crab management proposals, and will also prepare recommendations for the Alaska Board of Fisheries. For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: January 30, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-2575 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on February 28 and on March 1, 1990, at the Virginia Beach Resort and Conference Center, 2800 Shore Drive,

DEPARTMENT OF DEFENSE**Department of the Army****Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting**

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 25 February 1990, at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1630 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPPM, at telephone number 756-1800, between 0800-1530 hours. Topics to be discussed should be received on or before 18 February 1990.

Dated: January 23, 1990.

Francis A. Galluzzo,

Acting Director, Directorate of Personal Property.

[FR Doc. 90-2542 Filed 2-2-90; 8:45 am]

BILLING CODE 3710-08-M

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 27 April 1990.

Place of Meeting: Washington, DC.

Start Time of Meeting: 9:00 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1990.

All proceedings are open. For further information, contact Lieutenant Colonel Robert M. Currey, United States Military Academy, West Point, NY 10996-5000, (914) 938-3301.

For the Chairman of the Board of Visitors.

Robert M. Currey,

Lieutenant Colonel, U.S. Army, Executive Secretary, USMA Board of Visitors.

[FR Doc. 90-2541 Filed 2-2-90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY**Energy Information Administration****Agency Information Collections Under Review by the Office of Management and Budget**

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96-511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) the Sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, reinstatement, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before March 7, 1990. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Office listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address Comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503. (Comments should also be addressed to the Office

of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, EIA's Office of Statistical Standards (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for review were:

1. Conservation and Renewable Energy/ Energy Information Administration
2. CE-63A/B
3. 1901-0292
4. Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module/Cell Manufacturers Survey
5. Revision
6. Annually
7. Mandatory
8. Businesses or other for-profit
9. 64 respondents
10. 64 responses annually
11. The estimated average hours per response for each of the respondents is 3 burden hours.
12. The estimated total reporting hours for the revised CE-63A/B are 192.
13. CE-63A/B will collect data about the solar energy industry, e.g., which companies are manufacturing collectors, the type of collectors being manufactured, the quantity, use, and change in the industry. Data will be published. Respondents are manufacturers, importers, and exporters of solar thermal collectors and companies manufacturing photovoltaic modules. (and)
1. Economic Regulatory Administration
2. ERA-424D
3. 1903-0069
4. Tertiary Incentive Annual Report of Prepaid Expenses
5. Extension
6. Annually
7. Mandatory
8. Businesses or other for profit
9. 25 respondents
10. 25 responses annually
11. The estimated average hours per response for each of the respondents is 4 burden hours.
12. The estimated total reporting hours are 100.
13. The ERA-424D collects data necessary for the Economic Regulatory Administration to review the use of prepaid goods or services previously reported as prepaid expenses. Data are used to monitor program participants. Respondents are operators of enhanced oil recovery projects.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC., January 31, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-2580 Filed 2-2-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TM90-1-84-002]

Caprock Pipeline Co.; Proposed Changes in Tariff Sheets

January 29, 1990.

Take notice that on December 1, 1989, Caprock Pipeline Company (Caprock) filed, pursuant to the November 3, 1989 Commission order, an explanatory statement concerning the ACA surcharge which Caprock was collecting for the previous fiscal year.

Caprock states that the correct ACA surcharge for fiscal year was \$0.0018 per Mcf. Caprock was collecting an ACA surcharge of \$0.0020 per Mcf. Caprock states that it recalculated the correct ACA surcharge applicable for fiscal year 1989, and hereby reports refunds in a total amount of \$1,656.77 to be distributed to Cabot Gas Supply Corporation in the amount of \$1,656.04 and to Transwestern Pipeline Company in the amount of \$.073.

Caprock also states that copy of this filing has been sent to Transwestern Pipeline Company and to Cabot Gas Supply Corporation.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211) (1989). All such protests should be filed on or before February 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2516 Filed 2-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-98-011 and RP89-133-006]

Colorado Interstate Gas Co.; Notice of Compliance Filing

January 29, 1990.

Take notice that Colorado Interstate Gas Company ("CIG"), on January 22, 1990, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1: to be effective February 1, 1990:

Second Revised Sheet No. 61G6

Fourth Revised Sheet No. 61G11

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued in these dockets on December 21, 1989, at 49 FERC ¶ 61,384. Specifically, the filing reflects revisions to CIG's Tariff due to the modification, required by the Commission's Order, of the Base Period and Deficiency Period utilized by CIG in computing the purchase deficiency factors for the allocation of CIG's take-or-pay Buyout-Buydown costs among CIG's affected jurisdictional firm sales customers.

CIG states that copies of the filing were served upon all of the parties to these proceedings and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2517 Filed 2-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN86-6-005 et al.]

Columbia Gas Transmission Corp. et al.; Filing of Pipeline Refund Reports

January 29, 1990.

Take notice that the pipelines listed below have filed proposed refund reports.

Filing Date	Company	Docket No.
12/12/89	Columbia Gas Transmission Corp.	IN86-6-005
12/21/89	Northwest Pipeline Corporation.	RP88-47-030
1/11/90	Trailblazer Pipeline Company.	RP84-94-004
1/12/90	El Paso Natural Gas Company.	RP88-136-002
1/17/90	National Fuel Gas Supply Corp.	TA85-1-16-010

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 20, 1990. Copies of the respective filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2518 Filed 2-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

January 29, 1990.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on January 25, 1990, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective March 1, 1990:

	Superseding
Seventy-Second Revised Sheet No. 3a	Seventy-First Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Seventy-Second Revised Sheet No. 3a is to reflect a \$.5735 per MCF increase in its current cost of gas.

This filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests

should be filed on or before February 5, 1990. Protests will be considered by the Commission in determining the appropriated action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2519 Filed 2-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-032]

Northwest Pipeline Corp.; Proposed Change In Rate Schedule

January 29, 1990.

Take notice that on January 18, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Substitute Eighteenth Revised Sheet No. 2-B, to be a part of its FERC Gas Tariff, Original Volume No 2.

The purpose of this filing is to incorporate both the new fuel percentages approved by the Commission in Docket No. TM90-3-37-000, and the gathering language revisions approved by the Commission in Docket No. RP88-47 *et al.*

Northwest requests an effective date of December 1, 1989 for the tendered tariff sheets. A copy of this filing is being served on all jurisdictional customers and affected state commissions.

Any person desiring to be protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-2520 Filed 2-2-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/53C; FRL 3708-7]

Ethylene Bisdiethiocarbamates (EBDC); Special Review; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA will conduct a meeting on February 7, 1990, to discuss matters concerning the special review of pesticides containing Ethylene Bisdiethiocarbamates (EBDC).

DATES: The meeting will be held on February 7, 1990, from 1:30 pm to 5:00 pm.

ADDRESS: The meeting will take place at the U.S. Environmental Protection Agency, Washington Information Center (WIC) Rm. 3 North, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wendy Butler, Office of Pesticide Programs, Public Information Branch (H7506C), 1921 Jefferson Davis Highway, Arlington, VA 22202, Phone: 703-557-4448.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public unless there is a necessity to close portions of the meeting to the public to discuss matters of a confidential business nature.

Matters To Be Considered

Grower issues related to the Special Review of pesticides containing chemicals known as the Ethylene Bisdiethiocarbamates (the EBDCs). The Agency's proposed decision concerning the EBDCs was published at 54 FR 52158 on December 20, 1989. Since that time representatives of a number of growers and grower groups have requested that the Agency meet with them to discuss matters related to the Special Review and concerning possible information that such persons may choose to provide to the Agency for its consideration prior to a final decision on the EBDC Special Review.

The Agency will meet with grower representatives at the time and place noted above. In this instance, the Agency has decided to invite interested members of the public to attend this meeting.

A memorandum describing this meeting will be entered into the EBDC Special Review Docket in accordance with pertinent requirements in 40 CFR part 154.

Dated: January 26, 1990.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 90-2532 Filed 1-31-90; 10:20 am]

BILLING CODE 6560-50-D

[FRL-3720-9]

Stratospheric Ozone Protection Advisory Committee

ACTION: Announcement of Advisory Committee Meeting.

SUMMARY: The next meeting of the U.S. Environmental Protection Agency (EPA) Federal Advisory Council on Stratospheric Ozone Protection (STOPAC) will be held on Wednesday, February 16, 1990. The meeting will take place from 9:00 a.m. to 12:00 p.m., at the Holiday Inn Capitol, 550 C St. SW., Washington, DC. The public is invited to attend. Seating will be limited and will therefore be on a first come, first served basis.

The purpose of the meeting will be to discuss financial assistance and technology transfer under the Montreal Protocol, to replace the use of chlorofluorocarbons (CFCs), halons, and other ozone depleting chemicals in developing countries.

FOR FURTHER INFORMATION CONTACT:

Karla Perri, at (202) 475-7496 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Dated: January 21, 1990.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 90-2673 Filed 2-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1990-1]

Voluntary Standards for Computerized Voting Systems

AGENCY: Federal Election Commission.

ACTION: Notice of Final Voluntary Standards for Computerized Voting Equipment.

SUMMARY: The Federal Election Commission (the "FEC") has approved the final "Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems" and three associated advisory plans: "A Plan for Implementing the FEC Voting Systems Standards"; the "System

Escrow Plan for the Voting System Standards Project"; and "A Process for Evaluating Independent Test Authorities". The text of these documents will not become part of the Code of Federal Regulations because they are intended only as guidelines for states and voting system vendors. States may mandate the specifications and procedures through their own statutes, regulations, or administrative rules. Voting system vendors may voluntarily adhere to the standards for reliability, accuracy, and integrity of their products. Further information is provided in the supplementary information that follows.

DATES: The voluntary standards and associated documents were approved for issuance by the Federal Election Commission on January 25, 1990.

FOR FURTHER INFORMATION CONTACT: Penelope S. Bonsall, Director, (202) 376-5670 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the issuance of the final technical standards and test specifications for computerized ballot tabulation systems. The Commission is also publishing associated advisory plans for implementing the standards, placing related proprietary information in escrow, and assessing the potential independent authorities that will test computerized voting systems against the standards. These documents are now available for use by states adopting or revising their own standards for voting systems used in their jurisdiction. Voting system vendors may also use them when designing their products.

On August 8, 1989, the Commission published a notice in the **Federal Register** seeking comments on the draft standards and three associated plans. 54 FR 32479. Eight written and several verbal comments were received in response to that notice. In addition, the National Institute of Standards and Technology provided lengthy remarks in answer to the Commission's formal request that one of their officials review and comment on the documents.

The Commission has made corrections and appropriate revisions to the documents based on the comments received. The principal areas in which the current performance and test standards differ from the drafts formally released in August of 1989 are as follows:

(1) The functional specifications in section 2 have been adjusted and language clarified that might have needlessly limited the design of direct recording electronic voting systems;

(2) Specific numerical subsystem accuracy rates present in earlier drafts

have been restored to the hardware requirements in section 3;

(3) A requirement has been added for punchcard and marksense ballots to include a unique machine-readable punch or code to identify the ballot configuration;

(4) Logical correctness, data accuracy, and operational failure have been distinguished from one another in sections 3 and 7;

(5) The requirements for the retention of electronic data have been uniformly changed to 6 months throughout the document, and the 22 month document retention requirements have been substantially clarified in Appendix C;

(6) The software design and coding requirements in section 4 have been expanded to clarify that other types of programming environments are permissible and to specifically prohibit the ballot processing code from being self modifying;

(7) A requirement has been added to section 4 and Appendix B obligating the voting system vendor to provide an audit trail of software acquisition;

(8) A requirement for a real-time clock has been incorporated in section 4 to provide time and date for all system audit records;

(9) Required, system-generated audit trail records have been clarified in section 4;

(10) The software design guidelines for module size and length, and the optional voter confirmation capability in direct recording electronic systems have been revised in appendix E;

(11) A preference for dedicated systems has been stated as part of the security provisions in section 5, but not as a requirement; and

(12) The discretionary use of software testing tools by independent test authorities has been expressly permitted in section 7 and the requirements regarding software source code examination and testing upon modification have been clarified.

The primary changes to the implementation plan involve the advisory timetable for implementation and the recommendation that states encourage the use of high level language in key portions of new system software. The Commission has adjusted some of the dates in the timetable to compensate for the delay in issuing the standards. In addition, the revised timetable urges states to require local jurisdictions to automatically or manually implement the audit trail and security capabilities specified in the standards by January 1992. The plan now also recommends that states require vendors to use high level language in key portions of brand

new ballot counting programs submitted for initial testing after January 1990.

In the plan for evaluating test authorities, the major change is that the target date for the first phase has been revised. The Commission has also modified the companion escrow plan to clearly state that the proposed system is not a fail safe method of protecting elections from being deliberately or accidentally compromised through software manipulation or errors in election preparation and coding. In addition, misleading language distinguishing between complexities in hardware and software testing has been deleted from Appendix A of this plan.

The most significant number of comments focused on the hardware and software standards, the qualification testing requirements, and the escrow plan. Several of the comments identified areas needing clarification, while others recommended changes that were judged to be beyond the purview of the standards or the escrow plan. The rationale for revising or rejecting suggestions on principal issues follows.

Force and Scope of the Standards

The U.S. Congress approved funding for the Commission to develop voluntary voting system standards; however, the agency received several comments recommending that the standards be mandatory. This recommendation has been rejected because the Commission does not have the legal authority to mandate such standards and because it would be contrary to legislative intent. Congress intended the standards to be advisory, not a directive, to states implementing or revising their own standards.

A few comments called for standards of such rigor that they would approach design specification or would usurp the authority of states to decide ballot format. The standards are intended to address what a voting system should reliably do, not how the system should meet this requirement. The Commission, therefore, has decided not to incorporate as requirements several design recommendations such as those that would: mandate that direct recording electronic systems produce machine readable paper confirmation of the voter's choices; obligate all voting systems to be accessible to the handicapped; require ballot rotation; and prohibit Votomatic punchcard voting systems.

Functional Requirements

One commenter suggested that the standards' functional requirements did not encompass varied designs of direct

recording electronic systems. The functional specifications had not been limited to any specific system concept; however, some descriptions did appear to point to a specific design. The Commission has revised this section where language appeared to unnecessarily restrict design.

Subsystem Accuracy Rates

One commenter urged the Commission to restore the specific numerical subsystem accuracy rates that had been included in earlier drafts of the standards. The Commission agreed with the remarks and has made corresponding changes to the hardware requirements. This respondent also remarked that the different measures of system accuracy were not clear. Therefore, the Commission has added language to clarify the differences among data accuracy, software logical correctness, and operational system malfunctions.

Hardware and Ballot Design

Two respondents recommended that the Commission mandate hardware and ballot design requirements aimed at making voting systems easier for voters to use and less susceptible to the influence of human factors. This would have included a prohibition against prescored ballots, provisions to combat voter drop off due to long or multiple ballots, and requirements for a fully visible ballot (i.e. no Votomatic), access for the disabled, and ballot rotation. The standards address human factors to a certain degree and discuss ergonomic factors in the appendix presenting hardware design guidelines; however, the Commission has rejected these respondent's proposals, primarily because they are beyond the scope of the standards. Many of the recommendations might trespass on the authority of states to establish a style of ballot appropriate for their elections and population. Furthermore, the federal law that addresses polling place accessibility for the elderly and the handicapped does not require all voting systems to be accessible to the disabled. Public Law 98-435.

Software Design

The Commission received comments from several technical experts recommending that the standards require voting system software to be programmed in a high level language. Conversely, other technical experts had previously stated that acceptably testable programs could be written in assembly languages. Election officials had expressed concern over the potential for future noncompliance.

They were worried that they would be required to replace adequate software written in assembly language, should the standards require high level language. Voting system vendors had voiced concern that they would be forced to rewrite existing programs for those systems to be marketed in the future. Technical experts agreed, however, that given programs written in a high level language, it is potentially easier to detect hidden code and other irregularities.

In attempting to balance competing interests, the Commission has maintained that the use of high level language in voting system software is desirable, but not required. Instead, the Commission's advisory implementation plan urges states to adopt measures to promote the use of high level language for certain key portions of software programs developed in the future. This recommendation is not intended to preclude the continued use of existing or soon to be released assembly language software that conforms to state requirements and standards.

The Commission also received and comment requesting that the software coding guidelines in appendix E be amended to permit other recognized programming techniques. The Commission subsequently clarified this appendix and the software requirements in section 4, because the intent was not to prohibit the application of software concepts such as declarative structure and object oriented or functional programming languages.

Another commenter recommended that the standards incorporate detailed requirement for module size and length and prohibit code from being self modifying. Although it was implied in the earlier draft, the Commission added a statement to section 4 specifically prohibiting self modifying code. The Commission incorporated the suggested specifications for software module construction into the software design guidelines, but did not make them a requirement primarily because the use of different software techniques necessitate varying module criteria.

Audit Trails

The Commission received several comments regarding audit trails. One recommend that the voting system vendor be required to provide an audit trail identifying which software was written in-house, which was procured and modified, and which was procured and not modified. This commenter also urged that vendors be required to certify procured software as having been directly from the manufacturer.

Although the technical documentation

standards would have obligated vendors to provide this information, the requirement was not specifically stated. Viewing the information as important, the Commission has revised the standards to specifically require such documentation.

A number of responding technical experts stressed the need for a real time clock to record the date and time of system audit record entries. Although the Commission had previously considered and rejected such a requirement, the arguments of these respondents were convincing. The Commission, therefore, has incorporated this requirement.

Some of the comments also indicated a need to revise the description of what is covered under required system audit trails. In response to these comments, the Commission clarified the audit trail requirements and added a definition of audit trail requirements and added a definition of audit trail to the glossary.

Voter Confirmation on Direct Recording Electronic Systems

One commenter expressed concern that the standards do not require direct recording electronic voting systems to produce a physical record of the ballots cast, by which voters could confirm their choices and the electronic vote tally results could be verified. A proposed design for this voter confirmation capability was included in the remarks. The Commission has revised the description of the optional voter confirmation capability in Appendix E with those suggestions in mind. The recommendation that the capability be required was rejected. Though there is not complete unanimity among technical consultants, the Commission judged that the requirement for retention of ballot images maintained by a separate, parallel processing path provides the needed measure of system integrity.

Vote Tallying on Multi-User Computers

The Commission received a comment on the adverse impact of using multi-user computer environments for vote tallying. The commenter noted that dedicated systems would be more secure and recommended that the standards prohibit the use of anything else. The Commission has revised the standards to make it clear that dedicated systems are preferable but, given the political and economic realities in local election jurisdictions, the application of multi-user environments cannot be prohibited at this time. The precautions to be taken in

such an environment are, however, noted.

Software Evaluation

Several comments were received regarding the requirements for qualification testing. The majority of them concerned software evaluation. One commenter recommended that the standards require exercising the software in a simulated environment apart from the hardware. The Commission's position is that qualification testing is a process by which the system is shown to comply with the standards. The vendor should have already exercised the software alone in a simulated environment during software development; the test authority should not have to repeat these tests if the vendor has documented them well. The Commission has, therefore, rejected this recommendation.

Two respondents urged the use of automated software testing tools during qualification testing. The Commission had not ruled out the use of automated testing tools, but had not absolutely required them. If the vendor had already used them and sufficiently documented the tests, the independent test authority's use of the same tools would be repetitive. Furthermore, appropriate tools might not be available for all software tested. The Commission, therefore, revised the test requirements to expressly permit the use of these tools, if available and if the test authority deems they are necessary after reviewing the vendor's documentation.

The same two commenters recommended the in-depth review of software source code to search for errors and hidden code. The Commission's position on in-depth review of source code is that the independent test authority would conduct an in-depth review only if there were problems or deficiencies noted in any of the qualification tests. The Commission determined that the cost of routinely requiring such an exhaustive review outweighs the benefits.

Retention of Data and Documentation

In response to a question concerning the differing time requirements for retention of electronic data and documentation, the Commission requested verbal clarification from the U.S. Department of Justice. As a result of this discussion, modifications were made to uniformly require the retention of electronic data for a period of six months following an election, long enough to permit retrieval of the data in the event of recounts and contested elections. In Appendix C, the Commission has further clarified the

types of documentation that must be retained for the 22 month period required by federal law for investigation of election offenses.

Escrow Plan

Concerning the recommended escrow of system software, two respondents noted that the escrow plan does not fully protect the voting system from being accidentally or intentionally compromised through software manipulation or errors in election preparation and coding. Responding to their concerns, the Commission has added a cautionary note to the escrow plan regarding the effect of software escrow. One respondent suggested that the escrow plan urge the deposit of election specific database PROMs. Several states now require local jurisdiction to submit such programs to state authorities. Accordingly, the PROMs containing program code and election specific data to be installed for each election could be forwarded to the state, an issue that is more appropriately addressed by the voting system management guidelines to be produced by the Commission in the future. Similar responses relating to post-election resolution of potential irregularities, while noteworthy, are again the focus of the separate management guidelines. One commenter also suggested that shrink-wrapped source listings of compilers and operating systems, both those developed by the voting system vendor and those procured by the vendor from another software developer, be made part of the escrow deposit. The escrow plan already recommends that an electronic form of both be placed in escrow, but only for archival purposes. The Commission recognized that voting system vendors do not have access to the proprietary operating systems and compilers of third party vendors. The question of difficulty of updates to these items was also considered. The Commission did add one suggestion that source code listings of functions, system calls, and library routines be made part of the deposit.

Role of the Vendor

The Commission received recommendations that the standards require the voting system vendors to eschew involvement with voting system software once installed. Instead, election jurisdictions would be required to code the software for their own elections, and an independent test authority would maintain the software if revisions were needed. The Commission rejected these suggestions as inappropriate for the technical standards.

The Commission considered and approved the final changes to the voluntary standards and associated documents on January 25, 1990. The revisions are effective January 25, 1990.

Dated: January 30, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-2513 Filed 2-2-90; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Issuance of Certificate [Casualty]; Mar Line Universal Shipping Co. and Hoteles Marinos S.A.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers, or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Mar Line Universal Shipping Company and Hoteles Marinos S.A.

c/o Kirlin, Campbell and Keating, 14 Wall Street, New York, NY 10005.

Vessel: VISTAMAR.

Dated: January 30, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-2487 Filed 2-2-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Jahn Reisen GmbH and Mar Line Universal Shipping Company
c/o Kirlin, Campbell and Keating
14 Wall Street
New York, NY 10005

Vessel: VISTAMAR

Dated: January 30, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-2486 Filed 2-2-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Amsterdam-Rotterdam Bank N.V. and Stichting Amro, Both of Amsterdam, The Netherlands; Proposal to Engage in Certain Securities-Related Activities

Amsterdam-Rotterdam Bank N.V. and Stichting Amro, both of Amsterdam, the Netherlands (the "Applicants"), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through their indirect subsidiary, Pierson, Heldring & Pierson Investment Finance (U.S.) Inc., New York, New York ("Company"), in the following securities-related activities to be conducted throughout the United States: (1) Providing investment advisory and brokerage services on a combined basis to institutional and retail customers ("full-service brokerage"), including brokering and recommending to institutional customers securities in which Company has a principal's position, and also including acting as a riskless principal; (2) private placement of all types of securities as agent; (3) exercising discretion in buying and selling securities on behalf of clients, and (4) providing for institutional customers advice in connection with (i) the structuring of and arranging for interest rate and currency "swaps", interest rate "cap" and similar transactions; and (ii) merger, acquisition/divestiture and financing transactions and valuations and fairness opinions related to merger, acquisition and similar transactions (all types of advice collectively referred to as "financial advice").

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicants have applied to conduct these securities-related activities substantially in accordance with the limitations set forth in Regulation Y and the Board's Orders approving those activities for a number of bank holding companies. See, e.g., 12 CFR 225.25(b)(15), Bank of New England

Corporation, 74 Federal Reserve Bulletin 700 (1988), and PNC Financial Corp., 75 Federal Reserve Bulletin 396 (1989) (full-service brokerage); (see also Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 695 (1988)); J.P. Morgan & Co. Incorporated, 76 Federal Reserve Bulletin 26 (1990), and Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989) (private placement transactions as agent and riskless principal transactions); J.P. Morgan & Co. Incorporated, 73 Federal Reserve Bulletin 810 (1987) (investment discretion), and Signet Banking Corporation, 73 Federal Reserve Bulletin 59 (1987) (financial advice).

Applicants contend that, because Company will not be involved in any underwriting or dealing activities, approval of the application would not be barred by section 20 of the Glass-Steagall Act, which prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. See 12 U.S.C. 377.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 1, 1990.

Board of Governors of the Federal Reserve System, January 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-2539 Filed 2-2-90; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for

processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 26, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gunnar W. Anderson and Barbara S. Anderson, Joint Tenants; Peggy L. Arno, Denton, Texas; Donald R. Atchinson; Joseph N. Atkins, Custodian (Martha Atkins), Taylor, Texas; Antoinette M. Baker, Charyn Baker, Hurst, Texas; Dorothy G. Baker and R.W. Baker, Joint Tenants; R.S. Baker Jr. and Central National Bank and Trust Company, through the R.S. Baker Trust (Abbey J. Baker); R.S. Baker Jr. and Central National Bank and Trust Co. through the R.S. Baker Trust (Grandchildren); Mrs. R.S. Baker, Jr.; Romayne S. Baker, Marilyn M. Barger, Lakeville, Pennsylvania; E. Lucille Barnes and Connie G. Weber, Ron G. and Betty J. Barnes, Joint Tenants; Bryson P. Berry and Ione Berry, Joint Tenants; Raymond A. Bigger through the Edward C. Anderson Trust; Patti M. Blanton; William L. Bonar and Kathleen I. Bonar, Joint Tenants; Jeannine F. Bowers; John W. Bowers, Jr.; James D. Boyer and Jane Ann Boyer, Joint Tenants; Jeanette Brainard, Joint Tenants; Jeanette F. Brainard, Custodian (Brad Lee Brainard); Bradford Lee Buchanan, Aurora, Colorado; Joseph Brochu and Donna Brochu, Joint Tenants; William James Buchanan, Clifton, Virginia; Dean Buckminster and Gloria Jean Buckminster, Joint Tenants; Thomas B. Cassidy, Fairmont, Oklahoma; Central Registration Co. of Enid through CNB Profit Sharing Trust; Central Registration Co. of Enid through Elizabeth Hinson Trust; Central Registration Co. of Enid through Rosalee Luck Trust; Central Registration Co. of Enid through Geo. S. Wilson Trust; Central Registration Co. of Enid through Genevieve Wogan Trust; Central Registration Co. of Enid through Maurine E. Wright Revocable Trust; Howard L. Cochran and Dorothy J. Cochran, Joint Tenants; J B Cummins Trust through Barbara Cummins Chaffin; J B Cummins Trust through Beverly Cummins, Shirley Cunningham; Kay C. Dillingham; Verna Hill Davis; W.D. Diehl and Patsy E. Diehl, Joint Tenants; Dan L. Dillingham Revocable Trust; Daniel Chad Dillingham; John Edwards Dillingham; Lori Dwyn Dillingham; Peter

Camp Dillingham; Frederick K. Doud; J. Morton Earnest; Jimmie H. Ehardt; Jimmie H. Ehardt, Custodian (Jonathan David Ehardt); Jimmie H. Ehardt, Custodian (Mary Kathryn Ehardt); Lillian M. Evans; David G. Everitt, Fort Collins, Colorado; Lawrence M. Everitt; Leslie G. Everitt, Jr. and Maxine O. Everitt, Joint Tenants; James D. Everitt, Boulder, Colorado; Maxine O. Everitt; Robert S. Everitt and Joyce N. Everitt, Joint Tenants, Ft. Collins, Colorado; R.S. Everitt and G.R. Haxton Trust (James Douglas Everitt), Ft. Collins, Colorado; Stanley K. Everitt, Ft. Collins, Colorado; Verna Fae Everitt; Helen Otjen Fagan, McAlester, Oklahoma; Brenda L. Finnegan; Theo Fite; Thomas Theo Fite, Custodian (Thomas Francis Fite); Dorothy J. Foglesong; Kim Ford; Cecil Fowler, Custodian (Jason Fowler), Phoenix, Arizona; Cecil Fowler, Custodian (Jill Fowler), Phoenix, Arizona; J. Douglas Frantz; Robert S. Frantz; Boyd W. Freeman; E. Whitson Freeman; Marjorie G. Gau; Richard Lee Gau; Glenndine Goodson; Nolan L. Graham and Betty L. Graham, Joint Tenants; H.C. Groendyke; John D. Groendyke, Custodian (Beverly Shawn Groendyke); John D. Groendyke, Custodian (John Hayden Groendyke); John D. Groendyke, Custodian (Melanie Val Groendyke); Barbara G. Gunning; Margaret Harmon and Lee R. Harmon; Kay Hatton, Sante Fe, New Mexico; Curtis L. Horrell; John E. Huckleberry and Norma Jean Huckleberry, Joint Tenants; Rex W. Hughes, Meta Hughes and Jane Gaines, Tenants in Common; Bill N. Humphrey; J.A. Humphrey and Beth Humphrey, Joint Tenants; Nancy Ernest Ingram, Tulsa, Oklahoma; Terry Lee Ingram, Tulsa, Oklahoma; Barbara J. Iven and T. Robert Iven, Joint Tenants; Edward A. Johndrow, Jr. and Alice Katherine Johndrow, Joint Tenants; Helen Joyce; John J. Kellet and Betty L. Kellet, Joint Tenants; Ann Ernest Kerr, Ardmore, Oklahoma; Robert Louis Kerr, Ardmore, Oklahoma; Joseph E. King; Margaret King; Raymond L. Koegel and Constance L. Koegel, Joint Tenants; Ralph A. Kremier and Marian L. Kremier, Joint Tenants; Richard H. Lambertz, Ron Licklider, Custodian (Warren Andrew Licklider); Loyd and Company, Ft. Worth, Texas; E.A. McCune and Margaret R. McCune, Joint Tenants; Billie G. McKeever; Clark McKeever; Douglas McKeever; Lois A. McKeever; Stephen G. McKeever; Jeffrey C. Mabry, Beaver Creek, Ohio; Charles H. McCreary and Nellie Rose McCreary, Joint Tenants; Gary W. Miller; Mrs. Jean Betty Milnor, Winnetka, Illinois; Dan Mitchell, Jr.; Donita Mitchell; Julie Ann Mitchell; James D. Montgomery, Jr. and

Mary Sue Montgomery, Joint Tenants; Bill Munn, Jr., Custodian (Jamie Munn), Manitou, Colorado; William W. Munn; Dorus M. Munsinger and Betty Gene Munsinger, Joint Tenants; Michael F. Murphy; Merry Lee Nafus; Myrtle M. Nusbaum; Wayne G. Oberlender and Rachel Oberlender, Joint Tenants; Gilbert Ott and Ann Louise Ott, Joint Tenants; Roy E. Oxford and Florence S. Oxford; John M. Parrish, III Trust (Elinor Hurst); Donald H. Phillips and Julia A. Phillips, Joint Tenants; Leslie E. Phillips, Custodian (Kristie Kay Phillips); Leslie E. Phillips and Mary Elizabeth Phillips, Joint Tenants; Leslie E. Phillips, Custodian (Leslyn Joy Spamer); Leslie E. Phillips, Custodian (Troy Allen Phillips); Don Pounds and Clara Pounds, Joint Tenants; Isham B. Richardson Trust (Isham B. Richardson); Janet Sue Rogers Anderson; Robert G. Rogers; Sara B. Scates, Pond Creek, Oklahoma; Stephen J. Sheik and Paula P. Sheik, Joint Tenants; William E. Shewey; George a Shults and Jeannette Shults; Robert D. Shuttee Trust (Robert D. Shuttee); Singer Steel, Inc.; Richard A. Singer and Sue Ellen Singer, Joint Tenants; Jan Coldiron Smith; Gary L. Smyly and Charlene R. Smyly, Joint Tenants; Joseph W. Stafford, Jr., West Plains, Missouri; Susan R. Stafford; Thomas V. Stafford; Joseph W. Stafford; Joseph W. Stafford and Ruth Stafford, Joint Tenants; H. Leland Steffen; Lisa Storer Cross; Lucy T. Storer; Jeanette M. Strain, Denver, Colorado; Helen O. Stuart; Anne C. Sturdivant, Irvine, California; Leslie C. Sweatt; Paul Thomas; Suzanne Vater; William L. Walker; Connie B. Weber, Custodian (Jeffery D. Weber) Oklahoma City, Oklahoma; Terrence M. Weber and Connie B. Weber, Joint Tenants, Oklahoma City Oklahoma; C.W. Webster and Genevieve Webster, Joint Tenants; Defendant Nolda Whiteneck; Otho R. Whiteneck, II Trust (Otho Whiteneck); Otho R. Whiteneck, II; Jason Wingate, Custodian (Danny Wingate); Mendi Wingate, Custodian (Danny Wingate); Roger G. Yauchzy, Sumpter, South Carolina; Andria Dillingham Zachman; Board of Directors, Central Service Corporation; and Ann Edwards Baker Trust (Romayne S. Baker, Trustee); to all retain less than 1.0 percent of the voting shares of Central Service Corporation, Enid, Oklahoma, and thereby indirectly acquire Central National Bank and Trust Co. of Enid, Enid, Oklahoma.

In connection with this application, Romayne S. Baker & R.S. Baker, Jr. through the R.S. Baker Trust proposes to acquire an additional 3.16 percent for a total of 6.94 percent; R.S. Baker, Jr., to acquire an additional 1.65 percent for a

total of 1.68 percent; Romayne S. Baker Oil & Gas Partnership to acquire an additional 3.33 percent for a total of 4.9 percent; John W. Bowers, III, to acquire an additional 2.22 percent for a total of 2.99 percent; James B. and Jacqueline M. Cummins, Joint Tenants, to acquire an additional 5.93 percent for a total of 8.52 percent; John D. Groendyke to acquire an additional 17.41 percent for a total of 19.68 percent; Messer-Bowers Profit Sharing Trust to acquire an additional 1.48 percent for a total of 3.15 percent; Messer-Bowers Realty Company to acquire an additional 2.22 percent for a total of 2.29 percent; Mr. & Mrs. R.L. Rogers to acquire an additional 8.43 percent for a total of 9.16 percent; Catherine A. Sturdivant, Chicago, Illinois, to acquire an additional 0.16 percent for a total of 0.41 percent and 1989 Baker Grandchildren Trusts (R.S. Baker, Jr. and Central National Bank, Trustees to acquire 0.40 percent of the voting shares of Central Service Corporation.

Also, Romayne S. Baker, Jr. through R.S. Baker, Jr. Trust proposes to retain 4.92 percent; John W. Bowers to retain 1.39 percent; Carol B. Cromwell and Romayne S. Baker Trust (Carol B. Cromwell Revocable Trust) to retain 4.69 percent; Curtis L. Horrell and/or Thelma Horrell, Drummond, Oklahoma, to retain 1.17 percent; and Joseph E. King to retain 2.12 percent.

Board of Governors of the Federal Reserve System, January 30, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-2538 Filed 2-2-90; 8:45 am]

BILLING CODE 6210-01-M

Century National Corp., et al., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that

application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 26, 1990.

A. Federal Reserve Bank of Atlanta
 (Robert E. Heck, Vice President) 100
 Marietta Street, NW., Atlanta, Georgia
 30303:

1. *Century National Corporation*,
 Clearwater, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Security National Bank, Clearwater, Florida, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 30, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.
 [FR Doc. 90-2537 Filed 2-2-90; 8:45 am]
 BILLING CODE 6210-01-M

First of America Bank Corp., et al., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1990.

A. Federal Reserve Bank of Chicago
 (David S. Epstein, Vice President) 230
 South LaSalle Street, Chicago, Illinois
 60690:

1. *First of America Bank Corporation*,
 Kalamazoo, Michigan; to acquire PrimeBank, Federal Savings Bank, Grand Rapids, Michigan, a federally chartered stock savings bank to be operated as a nonbanking subsidiary of Applicant pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 30, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.
 [FR Doc. 90-2536 Filed 2-2-90; 8:45 am]
 BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date the HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the *Federal Register*.

The Secretary of the Treasury has certified a rate of 15% for the quarter ended December 31, 1989. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 26, 1990.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 90-2508 Filed 2-2-90; 8:45 am]

BILLING CODE 4150-04-M

Administration on Aging

[Program Announcement 13655.901]

Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), HHS.

ACTION: Notice.

SUBJECT: Announcement of availability of funds and opportunity to apply under the Older Americans Act, Title VI, Grants for Native Americans, Part A—Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in Fiscal Year 1990, and, contingent upon the availability of funds, in Fiscal Year 1991, under the Older Americans Act, Title VI, Grants for Native Americans, Part A—Indian Program, from eligible federally recognized Indian Tribes that are not now participating in title VI, part A, either as a single entity or as part of a consortium.

FOR FURTHER INFORMATION CONTACT:

Dr. Frederick J. Luhmann, Acting Associate Commissioner, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4752, 330 Independence Avenue, SW., Washington, DC 20201, telephone (202) 245-2957.

DATES: The applications must be received or postmarked by Monday, April 30, 1990.

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI part A of the Older Americans Act which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created a new title, title VI, Grants for Indian Tribes. The purpose of this title was to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under

title III of the Older American Act. (Title III of the Older Americans Act, entitled "Grants for State and Community Programs on Aging," is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to grants for Native Americans, and part B—Native Hawaiian Program was added.

Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportation, chore services, and other supportive services which contribute to the welfare of older Native Americans. Nutritional services and information and referral services are required by the Act.

2. Eligibility of an Indian Tribal Organization to Receive a Grant

To be eligible to receive a grant, a tribal organization of an Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: "(1) the tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services." For purposes of title VI part A, the terms "Indian tribe" and "tribal organization" have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns only those federally recognized Indian Tribes not now participating in title VI part A, either as grantees themselves or as members of a consortium where one tribal organization represents one or more eligible Tribes.

3. Available Funds

Funds have been appropriated for Fiscal Year 1990 are expected for Fiscal Year 1991 for the purposes of promoting services under title VI of the Older Americans Act. Funds are available to tribal organizations on a formula basis which considers the number of eligible applicant tribal organizations, and the number of elders over age 60 in each tribal organization's proposed title VI service area.

Information on grant levels in Fiscal Year 1989 is given below as a guide on funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (number of older Indians age 60 years and over, represented by the tribal organization)	Typical amounts of awards in FY 1989
50 to 100.....	\$38,411
101 to 200.....	46,422
201 to 300.....	54,844
301 to 400.....	63,266
401 to 500.....	71,688
501+.....	80,110

Amounts of awards for tribal organizations applying under this announcement will depend on availability of funds.

4. Application Process

Applicants should submit an application, describing their proposed plan for nutritional and supportive services for older Indians for Fiscal Years 1990 and 1991, as described in section 5 below, "Content of the Application." One signed original and one copy of the application including all attachments, must be submitted to the Regional Program Director.

Administration on Aging, in the Regional Office of the Department of Health and Human Services. The addresses are as follows:

Regional Offices

Region I (CT, MA, ME, NH, RI, VT)

Judith Rackmill, Acting RPD, John F. Kennedy Building, Room 2011, Boston, Massachusetts 00003, (617) 565-1158, FAX (617) 565-1084; verify 565-1080

Region II (NJ, NY, PR, VI)

Judith Rackmill, RPD, 26 Federal Plaza, Room 4149, Broadway and Worth Streets, New York, New York 10278, (212) 264-2974, FAX (212) 264-2162; verify 264-3067

Region III (DC, DE, MD, PA, VA, WV)

Paul E. Ertel, Jr., RPD, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6891, FAX (215) 596-5028; verify 596-6891

Region IV (AL, FL, GA, KY, MS, NC, SC, TN)

Frank Nicholson, RPD, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323, (404) 331-5900, FAX (404) 331-5490; verify 331-5900

Region V (IL, IN, MI, MN, OH, WI)

Eli Lipschultz, RPD, 105 West Adams Street, 21st Floor, Chicago, Illinois 60603, (312) 353-3141, FAX (312) 353-1194; verify 353-3141

Region VI (AR, LA, NM, OK, TX)

John Diaz, RPD, 1200 Main Tower Building, Room 1000, Dallas, Texas 75202, (214) 767-2971, FAX (214) 767-4537; verify 767-2971

Region VII (IA, KS, MO, NE)

Richard Burnett, RPD, 601 East 12th Street, Room 384, Kansas City, Missouri 64106, (816) 426-2955, FAX (816) 426-5299; verify 426-6421

Region VIII (CO, MT, ND, SD, UT, WY)

Jo Ann Pegues, Acting RPD, Federal Office Building, Room 1185, 1961 Stout Street, Denver, Colorado 80294, (303) 844-2951, FAX (303) 844-2394; verify 844-5568

Region IX (AS, AZ, CA, CNMI, GU, HI, NV, TT)

Jack McCarthy, RPD, 50 United Nations Plaza, Room 443, San Francisco, California 94102, (415) 556-6003, FAX (415) 556-4161; verify 556-6003

Region X (AK, ID, OR, WA)

Chisato Kawabori, RPD, Blanchard Plaza, Room 600, RX-33, 2201 Sixth Avenue, Seattle, Washington 98121, (206) 442-5341, FAX (206) 442-4333; verify 442-4527

5. Content of the Application

The application must meet the criteria in sections 614(a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. No standard Federal forms are required. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the needs of the service population.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) *Nutrition.* Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the approximate number of persons to be served. Nutrition services must be substantially in compliance with the provisions of part C of title III. If no title VI part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) *Information and Referral.*

Information and referral services are required. They must be available for older Indian living in the title VI part A service area and there should be a description of how they will be provided. The approximate number of individuals to be served should be stated. If no title VI part A funds are to be used for information and referral services, the application must state how such services are provided in other ways, and how they are financed.

(c) *Other Supportive Services.* The application must describe any other supportive services to be provided wholly or partly by title VI part A funds. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as "Supportive Services."

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and legal assistance providers must comply fully with the requirements in § 1321.71(d) through 1321.71(k).

Transportation of persons to nutrition sites or other places is a part of "Supportive Services."

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include a narrative description of the title VI part A service area, and a map. The area to be served by title VI part A must have clear geographic boundaries. There is no prohibition, however, to its overlapping with areas served by title III.

E. Additional Information

(1) Older Indians in the Title VI Part A Service Area

The law requires that, to be eligible for title VI funding, a tribal organization must represent at least 50 older persons age 60 years or over. Therefore the number of persons age 60 or over living in the proposed title VI service area must be stated in the application. The grant is based on this number age 60 years or over. As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an "older Indian" for purposes of eligibility to receive title VI services. If a Tribe selects a definition of "older Indian" for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a

consortium must use the same age for "older Indian."

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit a copy of the tribal council resolution authorizing participation in title VI part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is needed from each participating Tribe, specifically authorizing representation for the purpose of Title VI Part A of the Older Americans Act.

(3) Program Assurances

Title VI part A Program Assurances must be included in the application. The title VI part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988. The tribal organization must state that it agrees to abide by all the provisions for the entire period being applied for (Fiscal Years 1990 and 1991).

Applicants for title VI part A funding are also required to state in writing that they will abide by all the requirements in title 45 of the Code of Federal Regulations part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government—(Federal Register, Vol. 53, No. 48, March 11, 1988, pages 8078-8103.)

Copies of the title III and Title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. See addresses and telephone numbers in section 4 above, "Application Process."

(4) Identifying Information

Applicants must include a list which provides the following information separately, for both the principal official of the tribal organization, and the proposed Title VI program director: Name, Title, Address including Zip Code, Telephone Number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the application must list the federally recognized Tribes which are included. A copy of each tribal resolution must be enclosed.

6. Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before Monday, April 30, 1990. (Applicants are cautioned to

request a legible dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

Dated: January 30, 1990.

Joyce T. Berry,

Acting Commissioner on Aging.

[FR Doc. 90-2568 Filed 2-2-90; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

[Docket No. 90P-0026]

Ice Cream Deviating From the Standard of Identity; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Giant Foods, Inc., to market test a product designated as "light ice cream" that deviates from the U.S. standard of identity for ice cream (21 CFR 135.110). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center For Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Giant Foods, Inc., P.O. Box 1804, Washington, DC 20013.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for ice cream in 21 CFR 135.110 in that: (1) The milkfat content of the

product is reduced by at least 50 percent; and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a ½-cup serving of the product contains 6 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of this variation is to offer the consumer a product that is nutritionally equivalent to ice cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light ice cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statement "50 percent less fat and 33 1/3 fewer calories than Giant ice cream".

The product complies with reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is a 50-percent reduction in the fat content of the product. The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9.

The permit provides for the temporary marketing of a total of 500,000 one-half gallon containers. The test product will be produced and packaged at Giant Foods, Inc., Jessup, MD 20794, and will be distributed in Maryland, Virginia, and Washington, DC.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but no later than May 7, 1990.

Dated: January 29, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-2565 Filed 2-2-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork

Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. Type of Request: Revised; **Title of Information Collection:** Health Insurance Common Claims Form for Medicare and Medicaid; **Form Numbers:** HCFA-1500, HCFA-1490S, and HCFA-1490U; **Frequency:** On occasion; **Respondents:** Individuals/households, State/local governments, businesses/other for profit, and small businesses/organizations; **Estimated Number of Responses:** Not applicable; **Average Hours per Response:** Not applicable; **Total Estimated Burden Hours:** 1.

2. Type of Request: Extension; **Title of Information Collection:** Peer Review Organization Reporting Forms; **Form number:** HCFA-613-619; **Frequency:** Monthly/quarterly; **Respondents:** Businesses/other for profit; **Estimated Number of Responses:** 3,240; **Average Hours per Response:** .25; **Total Estimated Burden Hours:** 810 (reporting) and 8,100 (recordkeeping) for a total burden of 8,910.

3. Type of Request: Reinstatement; **Title of Information Collection:** Payments for Physicians' Services Furnished in Hospitals, Skilled Nursing Facilities, and Comprehensive Outpatient Rehabilitation Facilities; **Form Number:** HCFA-R-20; **Frequency:** Claim-by-claim basis; **Respondents:** Businesses/other for profit; **Estimated Number of Responses:** Not applicable; **Average Hours per Response:** Not applicable; **Total Estimated Burden Hours:** 50,001 (recordkeeping).

4. Type of Request: Revision; **Title of Information Collection:** End-Stage Renal Disease Death Notification; **Form Number:** HCF-2746; **Frequency:** On occasion; **Respondents:** Businesses/other for profit; **Estimated Number of Responses:** 24,739; **Average Hours per Response:** .17; **Total Estimated Burden Hours:** 4,206.

5. Type of Request: Unapproved, in use; **Title of Information Collection:** State Survey Agency Budget Request—Long Term Care Facility Workload; **Form Number:** HCFA-2815; **Frequency:** Annually; **Respondents:** State/local governments; **Estimated Number of Responses:** 53; **Average Hours per Response:** 160; **Total Estimated Burden Hours:** 8,480.

6. Type of Request: Unapproved, in use; **Title of Information Collection:**

State Survey Agency Quarterly Expenditure Report—Long Term Care Facility Workload; **Form Number:** HCFA-2824; **Frequency:** Quarterly; **Respondents:** State/local governments; **Estimated Number of Responses:** 212; **Average Hours per Response:** 16; **Total Estimated Burden Hours:** 3,392.

ADDITIONAL INFORMATION OR COMMENTS:

Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Report Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: January 29, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 90-2570 Filed 2-2-90; 8:45 am]

BILLING CODE 4120-03-M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Modification of Existing System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify our system of records entitled, "Health Care Financing Administration Medicare Heart Transplant Data File," HHS/HCFA/BDMS No. 09-70-0040. This modification will:

- Change the name of the system of records to "Health Care Financing Administration Organ Transplant Data File."

- Change all references for "heart transplants" in the notice to "organ transplants."

- Update language in the routine use for research to conform with language used in other HCFA Systems of Records.

- Update the mailing address of the System Manager under SYSTEM MANAGER(S) AND ADDRESS or read: Director, Bureau of Data Management and Strategy, Health Care Financing Administration, Room 1-A-11, Security Office Park, 6325 Security Boulevard, Baltimore, Maryland 21207.

We have provided information about this modification in the "Supplementary Information" section below.

EFFECTIVE DATES: This proposed modification will become effective April

6, 1990, unless HCFA receives comments which would necessitate alteration to the system.

ADDRESSES: The public should address comments to Richard A. DeMeo, MCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Patricia Brooks, Director, Medical Coding Policy Staff, Office of Coverage Policy, Bureau of Policy Development, Health Care Financing Administration, room 1-J-2, East Low Rise building, 6325 Security Boulevard, Baltimore, Maryland 21207; or Rose Connerton, Bureau of Data Management and Strategy, Health Care Financing Administration, room 3-A-10, Security Office Park Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: The notice for the HCFA Medicare Heart Transplant Data File, System No. 09-70-0040, was published in the *Federal Register* on July 28, 1988 (53 FR 28440).

HCFA proposes to modify this system of records to change all references for "heart transplants" to read "organ transplants." Such references appear in the: **SYSTEM NAME;** **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM;** **CATEGORIES OF RECORDS IN THE SYSTEM;** and **PURPOSE OF THE SYSTEM.**

The routine use for research is being modified so that the language conforms to the notices for other HCFA Systems of Records. In addition, we are updating the System Manager(s) Address to provide the current location.

Data for this system of records are collected under the authority of section 1875 of the Social Security Act (42 U.S.C. 13951), as amended, which authorizes studies "relating to health care of the aged and disabled." In addition, section 1874(b) of the Social Security Act (42 U.S.C. 1395kk(b)) provides additional authority to obtain information needed to administer the Medicare program.

These modifications are being made in order to permit collection of sufficient data on all organ transplants to evaluate the criteria for Medicare coverage of organ transplants, including patient selection, facility experience, and patient outcomes.

While this modification will not change the purpose for which the information is to be used, it does alter the size of the system. Therefore, we have prepared a report of an altered system of records as required under 5 U.S.C. 552a(o). We are publishing the

notice in its entirety below for the convenience of the reader.

Dated: January 29, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0040

SYSTEM NAME:

Health Care Financing Administration (HCFA) Organ Transplant Data File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207 (Contact system manager for location of magnetic computerized records.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare and non-Medicare organ transplant recipients and donors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains individual's name, health insurance claim number or social security number (SSN), demographic and utilization information under the Medicare program, and clinical information such as the etiology of organ disease, medical history and/or current findings, pre-transplant laboratory data, date of transplant, complications, immunosuppressive protocol, date and cause of death, and readmissions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1874(b) (42 U.S.C. 1395kk(b)) and 1875 of the Social Security Act (42 U.S.C. 13951), as amended.

PURPOSE OF THE SYSTEM:

To collect data on organ transplants of Medicare and non-Medicare recipients and donors in order to evaluate the Medicare criteria for facilities, on patient selection, organ transplant facility experience levels, and patient outcomes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

1. The Organ Procurement and Transplantation Network (OPTN), established in accordance with section 372 of the Public Health Service Act (42 U.S.C. 274);

2. A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation,

programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system;

3. A Congressional office from the records of an individual in response to an inquiry from the Congressional office at the request of the individual;

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

- a. HHS or any component thereof; or
- b. Any HHS employee in his or her official capacity; or
- c. Any HHS employee in his or her individual capacity (when the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee); or
- d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components),

is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. Organizations deemed qualified by HCFA to carry out quality assessment, medical audits, or utilization review;

6. An individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) Demonstrates a reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record; and

- (2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and
- (3) Make no further use or disclosure of the record except:
- In emergency circumstances affecting the health or safety of any individual, or
 - For use in another research project, under these same conditions, and with written authorization of HCFA, or
 - For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or
 - When required by law
- d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number or Social Security Number.

SAFEGUARDS:

a. Authorized Users: Agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of the information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stores in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by Health and Human Services. Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, Part 6, "ADP System Security."

RETENTION AND DISPOSAL:

Records are retained for 5 years after the last action on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Data Management and Strategy, Health Care Financing Administration, Room 1-A-11, Security Office Park, 8325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the health insurance claim number or Social Security Number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations, 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations, 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from the hospital records or directly from the individuals. In addition to these hospital records, other information will be obtained from interviews with the patients and caregivers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90-2535 Filed 2-2-90; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Availability of Research Quantities of Human T-Lymphotropic Retroviruses (HTLV-III) and Cell-Line Material for Research Purposes

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services announced in the Federal Register of October 16, 1984 [49 FR 40556] the availability of limited quantities of HTLV-III virus and cell line material to be used for research purposes.

The National Cancer Institute (NCI) repository was the source of these materials. The NCI repository will now provide materials only for NCI investigators and their scientific collaborators. Those investigators who wish to obtain materials may contact Dr. Cedric W. Long, National Cancer Institute, Frederick Cancer Research Facility, Frederick, Maryland 21701-1013. Telephone (301) 698-1108.

Other investigators may obtain materials from the AIDS Research and Reference Reagent Program (Repository) which has been established by the National Institute of Allergy and Infectious Diseases (NIAID) to facilitate the distribution of reagents for AIDS research, identify needs for new reagents and promote their development, and promulgate reference reagent standards and procedures. The Repository is one of three World Health Organization AIDS Reagent Centers. It is operated by ERC Bioservices Corporation. Reagents from the Repository are available to qualified AIDS investigators worldwide. Materials from the Repository are provided for research purposes only. Assurance is required that recipients will not transfer agents to a third party, and will not employ reagents for therapeutic or commercial purposes.

For a reagent catalogue and further information, investigators may contact ERC at 649A Lofstrand Lane, Rockville, Maryland 20850. Telephone (301) 340-0245. FAX (301) 340-9245.

Dated: January 25, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-2525 Filed 2-2-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Environmental Impact Statement (EIS) for Three Proposed Leases; Fort Mojave Indian Reservation (FMIR) in Arizona and Nevada**

AGENCY: Bureau of Indian Affairs (BIA), Department of the Interior.

ACTION: Notice of Intent and Public Scoping Meetings.

SUMMARY: This notice advises the public that the Bureau intends to gather information necessary for the preparation of an EIS for the proposal to lease approximately 1,800 acres of the Fort Mohave Indian Reservation for mixed residential, commercial and recreational development projects in Clark County, Nevada, San Bernardino County, California, and Mohave County, Arizona. Public scoping meetings will be held to solicit suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. This notice is required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7).

DATES: Written comments should be received on or before March 17, 1990.

The scoping meetings will be held to identify issues and alternatives to be evaluated in the EIS. The dates and locations for the scoping meetings are as follows: Tuesday, February 13, 1990, 7 p.m., at the Riverside Casino—Mirror Room, 1650 Casino Drive, Laughlin, Nevada; Wednesday, February 14, 1990, at 7 p.m., Fort Mojave Indian Tribal Office, 500 Meniman Avenue, Needles, California; and on Thursday February 15, 1990, 1 p.m., McCarran Airport—Clark County Aviation Department Training rooms A & B, 5757 Wayne Newton Boulevard, Las Vegas, Nevada.

Comments and participation in the scoping process are solicited and should be directed to the BIA at the address below or to Sierra Delta Corporation, Attention: Robb Eidemiller, 3281 So. Highland Dr., suite 805, Las Vegas, Nevada, 89109. Significant issues to be covered during the scoping process will include biotic resources; archaeological, cultural, and historic sites; socioeconomic conditions; land use; air, visual, water quality and resource patterns.

ADDRESSES: Comments should be addressed to Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona, 85001 or to Sierra Delta Corporation at the address listed above.

FOR FURTHER INFORMATION CONTACT:

Ms. Amy L. Heuslein, Area Environmental Protection Specialist, Bureau of Indian Affairs Office, P.O. Box 10, Phoenix, Arizona, 85001. Telephone (602) 379-6781 or FTS 8-261-6781.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, in cooperation with the Fort Mojave Indian Tribe, will prepare an EIS on the following lease sites, totaling 1,800 acres, located on the Fort Mojave Indian Reservation along the Colorado River north of the junction of Nevada, California, and Arizona:

1. Proposed Lease Site A—Mojave Highlands, to be developed by Calmark Laughlin, Inc., totaling 750 acres, will include:

(a) Residential (single-family detached housing, multi-family housing), mobile homes, and RV park, totaling 475 acres.

(b) Open space that is comprised of a golf course, desert preserve, community park, and future recreational space, totaling 185 acres.

(c) Commercial space for retail establishments and a golf clubhouse/restaurant, totaling 70 acres.

(d) Public facilities, waste water treatment center, totaling 20 acres.

2. Proposed Lease Site B—Mojave Valley Resort, to be developed by J.F. Temple Development, Inc., totaling 1,050 acres, will include:

(a) Mojave Valley Resort I—Nevada side (500 acres):

(1) Residential (attached single-family housing, detached single-family housing, and multi-family housing), totaling 95 acres.

(2) Hotel-casino (5 hotel sites, 25 acres each), totaling 125 acres.

(3) Commercial office space, totaling 20 acres.

(4) Golf course, totaling 170 acres.

(5) Lake, totaling 50 acres.

(6) Major circulation (roadways), totaling 16 acres.

(7) Sewage treatment station, totaling 4 acres.

(b) Mojave Valley Resort II—Arizona side (550 acres):

(1) Two golf courses, totaling 265 acres.

(2) Residential (attached single-family housing, detached single-family housing, and multi-family housing) and RV park, totaling 235 acres.

(3) Open space, totaling 50 acres.

The Fort Mojave Indian Tribe has identified this area as a future new townsite and is adopting land use plans to support this type of development.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National

Environmental Policy Act of 1969, as amended (42 U.S.C. 4347 et seq.), Department of the Interior Manual (516 DM 1-6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: January 25, 1990.

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs. [FR Doc. 90-2515 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-050-4212-11; CA 182; CA 24921]

Realty Actions, California, Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California.

SUMMARY: The Notice of Realty Action for Recreation and Public Purposes (R&PP) Classification, published on page 31257 of the Federal Register, Volume 54, No. 143, on July 27, 1989, is hereby corrected to include an inadvertently excluded lot. As a result of Cadastral Survey Group No. 1062, it was discovered that a small, uneconomic remnant should be included in the classification for conveyance. The corrected legal description for the proposed conveyance is as follows:

Mount Diablo Meridian

T. 31 N., R. 5 W.,

Section 7, Lots 29 and 37.

Containing 19.78 acres, more or less.

All other terms and conditions of the previous Notice remain unchanged.

ADDRESS: Questions regarding this correction may be directed to: Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Mark Morse,

Area Manager.

[FR Doc. 90-2543 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-40-M

[ES-940-00-4730-12; ES-041965, Group 83]

Arkansas; Filing of Plat of Dependent Resurvey

January 25, 1990.

1. The plat of the dependent resurvey of the exterior boundaries and subdivisional lines of Township 3 South, Range 26 West, Fifth Principal, Arkansas, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on March 12, 1990.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 12, 1990.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy. Stephen G. Kopach,

Deputy State Director for Cadastral Survey.
[FR Doc. 90-2503 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-GJ-M

[CA-940-00-4520-12]

Filing of Plats of Survey; California

January 28, 1990

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10:00 a.m. on the date of submission to the California State Office Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford Robinson, Branch Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Sacramento, CA 95825, 916-978-4775.

SUPPLEMENTARY INFORMATION: The plants of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 4N., R. 13E.—Supplemental Plat (Sec. 28, SE1/4), accepted July 10, 1989, to meet certain administrative needs of the Bureau of Land Management.

T. 10N., R. 6W.—Supplemental Plat (Sec. 32), accepted July 12, 1989, to meet certain administrative needs of the Bureau of Land Management.

T. 4S., R. 18E.—Supplemental Plat (Secs. 27 and 28), accepted July 28, 1989, to meet certain administrative needs of the Bureau of Land Management.

T. 33N., R. 9W.—Dependent Resurvey and Survey (Group No. 949), accepted July 31, 1989, to meet certain administrative needs of the U.S. Forest Service, Trinity Forest Weaverville R.D.

T. 9N., R. 13E.—Supplemental Plat (Sec. 29), accepted August 11, 1989, to meet certain needs of the El Dorado National Forest.

T. 41N., R. 8W.—Dependent Resurvey and Subdivision (Sec. 8, Group No. 815)

accepted August 28, 1989, to meet certain administrative needs of the Ukiah District, Redding Resource Area.

T. 42N., R. 7W.—Dependent Resurvey and Survey (Group No. 1001), accepted September 1, 1989, to meet certain administrative needs of the Ukiah District, Redding Resource Area.

T. 37N., R. 7W.—Dependent Resurvey (Group 1000), accepted September 1, 1989, to meet certain administrative needs of the Shasta-Trinity National Forest.

T. 18S., R. 21E.—Supplemental Plat (Sec. 8, N1/2NW1/4), accepted September 6, 1989, to meet certain administrative needs of the Bakersfield District, Caliente Resource Area.

T. 29N., R. 9W.—Dependent Resurvey, accepted September 6, 1989, to meet certain administrative needs of the Ukiah District, Redding Resource Area.

T. 30N., R. 8W.—Dependent Resurvey (Sec. 6, Group 982), accepted September 6, 1989, to meet certain administrative needs of the Ukiah District, Redding Resource Area.

T. 24N., R. 9W.—Corrective Dependent Resurvey (Secs. 6 and 7, Group 992), accepted September 28, 1989, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 18S., R. 10E.—Supplemental Plat (Sec. 1, S1/2), accepted October 19, 1989, to meet certain administrative needs of the Bakersfield District, Hollister Resource Area.

T. 17S., R. 11E.—Supplemental Plat (Sec. 18), accepted October 19, 1989, to meet certain administrative needs of the Bakersfield District, Hollister Resource Area.

T. 7N., R. 23E.—Dependent Resurvey (Group 964), accepted November 8, 1989, to meet certain administrative needs of the Toiyabe National Forest.

T. 12N., R. 10E.—Supplemental Plat (Sec. 12, NW1/4), accepted November 15, 1989, to meet certain administrative needs of the El Dorado National Forest.

T. 9N., R. 10E.—Supplemental Plat (Sec. 29, SE1/4 and Sec. 32, NE1/4), accepted November 22, 1989, to meet certain administrative needs of the Bakersfield District, Folsom Resource Area.

San Bernardino Meridian, California

T. 16N., R. 11E.—Dependent Resurvey and Survey (Sec. 13, Group 1066) accepted September 28, 1989, to meet certain administrative needs of the U.S. Postal Inspector and the California Desert District, Needles Resource Area.

T. 1S., R. 18&19W.—Dependent Resurvey (Group 987), accepted October 5, 1989, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 13S., R. 9E.—Supplemental Plat (Sec. 33, SE1/4), accepted December 15, 1989, to meet certain administrative needs of the California Desert District, El Centro Resource Area.

T. 14S., R. 9E.—Supplemental Plat (Sec. 4, NE1/4), accepted December 8, 1989, to meet certain administrative needs of the California Desert District, El Centro Resource Area.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90-2544 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-40-M

[ES-940-00-4730-13; ES-041955, Group 11]

Maine; Filing of Plat of Dependent Resurvey and Survey

January 25, 1990.

1. The plat of the dependent resurvey and survey of the boundaries of the land held in trust for the Penobscot Indian Nation in Williamsburg Township, Piscataquis County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on March 12, 1990.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 12, 1990.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy. Stephen G. Kopach,

Deputy State Director for Cadastral Survey.

[FR Doc. 90-2502 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board Scientific Committee will meet in plenary session at the Holiday Inn, Highway 182 East, Gulf Shores, Alabama (telephone 205-948-6191), from 8 a.m. to 5 p.m. on March 7-8, 1990.

The meeting will include discussions of the following topics:

- Update on the Environmental Studies Program (ESP) for the regional and headquarters offices;
- Update on the Long-Range Studies Plan for the ESP;
- A discussion of all multiyear environmental studies with 2 or more years remaining;
- A discussion of studies proposed by the University of California at Santa Barbara and the Louisiana Universities Marine Consortium as part of their Cooperative Agreements with the Minerals Management Service (MMS);
- An update on MMS's progress in addressing risk perception issues; and
- The status of the National Academy of Sciences review of the ESP.

A detailed agenda is not yet available but may be requested from the MMS.

The meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come-first-serve basis. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 381 Elen Street, Herndon, Virginia 22070, telephone (703) 787-1717.

Dated: December 29, 1989.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 90-2501 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Permit Negotiation; Carteret Boat Tours, Inc.

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Carteret Boat Tours, Inc., authorizing it to continue to provide passenger ferry service for the public at Cape Lookout National Seashore, North Carolina, for a period of four (4) years from January 1, 1990, through December 31, 1993.

EFFECTIVE DATE: April 6, 1990.

ADDRESSES: Interested parties should

contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1989, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: January 19, 1990.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 90-2588 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-70-M

Minute Man National Historical Park, Concord, MA Public Review Period for Final General Management Plan

In accordance with the Department of the Interior's Policy for the preparation of General Management Plans, notice is hereby given that the National Park Service is releasing the General Management Plan for Minute Man National Historical Park. Members of the public interested in providing their views on the plan are asked to do so by March 15, 1990. Final approval of the plan is anticipated this spring. Copies of the plan are available from the Superintendent, Minute Man National Historical Park, P.O. Box 160, Concord, Massachusetts 01742 telephone: (617) 484-6192.

Dated: January 23, 1990.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 90-2589 Filed 2-2-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-325X]

Florida Midland Railroad Co., Inc.—Abandonment Exemption—in Lake County, Florida

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Florida Midland Railroad Company, Inc., of 1.4 miles of rail line near the City of Leesburg, in Lake County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 7, 1990. Formal expressions of intent to file an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 15, 1990, petitions to stay must be filed by February 20, 1990, and petitions for reconsideration must be filed by March 2, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-325X to:

(1) Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423
and

(2) Petitioner's representative: Robert L. Calhoun, Sullivan & Worcester, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar; (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: January 29, 1990.

By the Commission, Chairman Gradyson, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,
Secretary.

[FR Doc. 90-2571 Filed 2-2-90; 8:45 am]

BILLING CODE 7035-01-M

¹ See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****Alaska State Standards; Approval**

1. Background. Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On September 28, 1984, notice was published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending subpart R of part 1952.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated August 14, 1987, from Jim Sampson, Commissioner, to James W. Lake, Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.1001, 1926.55 and 1926.58, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, as published in the **Federal Register** (51 FR 22733 and 22756) on June 20, 1986, with subsequent corrections published in the **Federal Register** on May 12, 1987 (52 FR 17752). The State's amendments to AAC 04.0110 and AAC 05.045, Asbestos, Tremolite, Anthophyllite, and Actinolite, correspond respectively to 29 CFR 1910.1001 (asbestos in general industry) and 1926.58 (asbestos in construction); the State also amended AAC 05.030(m) to make definitions conform to 05.045, and amended 05.040(f)(3) to correspond to 1926.55.

The State's asbestos amendments were promulgated after notification of the State's proposed amendments in the statewide media on May 15, 1987 and May 22, 1987. The public comment

period was open for thirty days by James Sampson, Commissioner, under authority vested by AS 19.60.20. Public hearings were held on March 9, 10, 11 and 17, 1987. The State's asbestos amendments were adopted on July 14, 1987, with an effective date of August 13, 1987. The State incorporated editorial modifications, including using the State's numbering system and changing the word *shall* to *must*. The State standard amendment at AAC 04.0110 (asbestos in general industry) also contains two minor substantive differences from the Federal. It maintains annual monitoring rather than allowing the employer to discontinue it for those employees whose exposures fall below the action level. It also extends the Material Safety Data Sheet requirement to all employers, consistent with the scope of the State's hazard communication standard. (This latter difference no longer exists in actuality because the Federal hazard communication standard now also covers all employers.)

In response to Federal standards changes, the State has submitted by letter dated October 26, 1987, from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.1101, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, as published in the **Federal Register** (51 FR 37002) on October 17, 1986. The State's amendments to AAC 04.0102, Non-Asbestiform Varieties of the Minerals Actinolite, Tremolite and Anthophyllite, were promulgated after notifications of the State's proposed amendments in the statewide media on July 10 and 17, 1987, failed to elicit a request for public hearings. The public comment period was open for thirty days by James Sampson, Commissioner, under authority vested by AS 19.60.020. The State's standard amendments were adopted on August 26, 1987 with an effective date of October 14, 1987.

Following Regional and National Office review of these non-asbestiform amendments, Regional Administrator James Lake returned the amendments to the State for correction of deficiencies. The State submitted these corrections by letter dated May 17, 1989, from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan. The State standard amendments were promulgated after notifications of the State's proposed amendments in the statewide media on February 21 and 28, 1989, failed to elicit a request for public

hearings. The public comment period was open for thirty days by James Sampson, Commissioner, under authority vested by AS 19.60.020. The State's standard amendments were adopted on May 21, 1989, with an effective date of May 21, 1989. In addition to the corrections, the State incorporated editorial modifications, including using the State's numbering system and changing the word *shall* to *must*. The State standard also contains a couple of minor substantive differences from the Federal. It requires 30 years of record maintenance for both exposure records and medical records, as do the Federal asbestos standards for general industry and construction. The Federal non-asbestiform standard requires 20 years. It also specifies access by former employees to records.

In response to Federal standards changes, the State has submitted by letter dated February 3, 1989, from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State Definition and Requirement for a Nationally Recognized Testing Laboratory Standard comparable to 29 CFR 1910.7, as published in the **Federal Register** (53 FR 12120) dated April 12, 1988. The State's rules pertaining to Nationally Recognized Testing Laboratories, contained in AAC subchapter 1, were adopted on December 5, 1988, and became effective on February 4, 1989. A Notice of Proposed Changes was published in three major newspapers on August 9, 1988, and August 16, 1988. The public comment period was open for thirty days by Tom Stuart, Director, under authority vested by AS 19.60.020. No public hearing was held. The State incorporated editorial modifications, and changed the words "shall" and "shall not" to "must" and "may not" throughout the standard as required by Alaska's Attorney General. The State also amended the following previously approved State standards in subchapters 1, 2, 3, 7, and 9 to be substantially identical to the Federal counterparts:

AAC 01.1108(g)(2)/1910.28(f)(2)
 AAC 01.1108(h)(3)/1910.28(g)(3)
 AAC 01.1108(i)(2)/1910.28(h)(2)
 AAC 01.1108(j)(1)/1910.28(i)(1)
 AAC 02.305(8)/1910.35(h)
 AAC 01.0303(a)(1)(B)/1910.103(a)(ii)
 AAC 01.0306(a)(35)/1910.106(a)(35)
 AAC 01.0307(a)(8)/1910.107(a)(8)
 AAC 01.0308(a)(3)/1910.108(a)(3)
 AAC 09.230(b)(3)(A)/1910.109(d)(2)(iii)(a)
 AAC 01.0310(a)(14)/1910.110(a)(14)
 AAC 01.0310(b)(2)(C)/1910.110(b)(2)(iii)
 AAC 01.0310(c)(5)(A)(vii)/
 1910.110(c)(5)(i)(g)

AAC 01.0310(f)(5)(D)/1910.110(f)(5)(iv)
 AAC 01.0311(b)(1)(B)/1910.111(b)(1)(ii)
 AAC 01.1301(c)(3)(A)/1910.155(c)(3)(i)
 AAC 01.1301(c)(3)(D)(v)/
 1910.155(c)(3)(iv)(E)
 AAC 01.0703(a)(7)/1910.178(a)(7)
 AAC 01.0705(i)(5)(A)/1910.108(i)(4)(i)
 AAC 01.0706(j)(4)(A)/1910.181(j)(4)(i)
 AAC 01.1001(b)/1910.251(b)
 AAC 07.220(b)(4)(C)/1910.265(d)(2)(iv)(c)
 AAC 07.108(c)(4)(C) and (D)/1910.266(c)(4)
 (iii) and (iv)
 AAC 03.099(a)(1)/1910.399(a)(1)

On September 4, 1989, the State submitted by letter from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a clarification to the State rules which acknowledges the State's intent to adopt OSHA's accreditation program in lieu of establishing its own accreditation program.

2. Decision. The above State standards have been reviewed and compared with the relevant Federal standards. OSHA has determined that the State standards for non-asbestiform minerals, asbestos in general industry, and for Nationally Recognized Testing Laboratories are at least as effective as the comparable Federal standards as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves the standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. OSHA has also determined that the State's asbestos standard for construction is identical to the comparable Federal standard, and therefore approves this standard.

3. Location of supplement for inspection and copying. A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public participation. Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant

Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standard amendments were adopted in accordance with the procedural requirements of state law which included opportunity for public comments and further public participation would be repetitious.

This decision is effective February 5, 1990. (Sec. 18, Pub. L. 91-596, 84 STAT. 6108 [29 U.S.C. 667].)

Signed at Seattle, Washington this 27th day of October, 1989.

James W. Lake,
Regional Administrator
 [FR Doc. 90-2533 Filed 2-2-90; 8:45 am]
 BILLING CODE 4510-26-M

Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 25, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
 [FR Doc. 90-2546 Filed 2-2-90; 8:45 am]
 BILLING CODE 7537-01-M

Expansion Arts/Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts/Inter-Arts Advisory Panel (Organizational Development Pilot—Presenters Section) to the National Council on the Arts will be held on February 24, 1990 from 9:15 a.m.-5:30 p.m. in room 718 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 24, 1990, from 9:15 a.m.-10:30 a.m. and from 4 p.m.-5:30 p.m. The topics for discussion will be general program overview and policy issues.

The remaining portion of this meeting on February 21-22, 1990, from 9 a.m.-6:30 p.m. and February 23 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552B of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: January 25, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-2549 Filed 2-2-90; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Television Programming in the Arts Section) to the National Council on the Arts will be held on February 27, 1990, from 9:15 a.m.-6:30 p.m. and February 28, 1990 from 9 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (8) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 25, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-2548 Filed 2-2-90; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Section) to the National Council on the Arts will be held on February 26-March 2, 1990, from 9:15 a.m.-5:30 p.m. in room

M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 26, 1990, from 9:15 a.m.-10 a.m. The topic for discussion will be opening remarks and general discussion.

The remaining portions of this meeting on February 26, 1990, from 10 a.m.-5:30 p.m.; and February 27-March 2, 1990, from 9:15 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (8) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 25, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-2547 Filed 2-2-90; 8:45 am]

BILLING CODE 7537-01-M

POSTAL RATE COMMISSION

Presentation on Direct Marketing

January 30, 1990.

Notice is hereby given that the Postal Rate Commission will present a briefing, led by Mr. Lester Wunderman of Wunderman Worldwide, a marketing firm, on direct marketing.

The public is invited to the session which will be held on Friday, February 16, 1990, from 10 a.m. to 12 noon in the Postal Rate Commission's Hearing Room, 1333 H Street NW., suite 300, Washington, DC 20268-0001.

The purpose of the presentation is to provide a picture of direct marketing, i.e., creation of a direct marketing program, the economic and social roles

of direct marketing, and some examples of direct marketing campaigns.

The presentation will not include or make reference to postal rates or other specific issues which come before the Commission.

For further information, contact David F. Stover, General Counsel, Postal Rate Commission, 1333 H Street NW., suite 300, Washington, DC 20268-0001 [(202) 789-6820].

Charles L. Clapp,
Secretary.

[FR Doc. 90-2529 Filed 2-2-90; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27648; File No. SR-MSTC-89-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by Midwest Securities Trust Company relating to a revised fee schedule

January 26, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1989, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the text of Midwest Securities Trust Company's ("MSTC") 1990 price revisions to take effect January 1, 1990. MSTC's entire fee schedule is available in File No. SR-MSTC-89-10.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The revised fee schedule is designed to more accurately reflect the cost reductions realized through automation and economies of scale as well as selective fee adjustments due to labor intensive or single event processing. The economies of scale and improved technology have allowed the maintenance of the current individual line item fees in the majority of service areas.

The proposed fee changes also reflect fee revisions to MSTC's Legal Deposit Service. Participants may opt to perform the inspection of deposited securities for legal deposit and transfer agent requirements themselves or choose to have MSTC perform these functions. Participants desiring to perform their own legal inspections are subject to significantly reduced fees. MSTC has also imposed a Legal Deposit inquiry fee for those Participants who want to consult with MSTC regarding legal and transfer agent requirements prior to submitting securities for deposit under either the basic or full legal deposit service.

Of particular note, the fee structure of custody value charges has been changed to a sliding scale which reduces the per share or per bond value fees as a Participant's portfolio size increases. In

addition, the bearer bond price break threshold and value charge has been significantly reduced to reflect economies gained due to portfolio growth.

Finally, a new format is introduced for the fee schedule designed to better group similar service items to provide a more functional document. A new billing procedure will also be introduced in the first quarter of 1990 which will better describe and group line item charges.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 because it

establishes an MSTC fee change. At any time within 60 days on the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number SR-MSTC-89-10 and should be submitted by February 26, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY

[1990 Price Revisions]

Service	1989 fee		1990 fee	
Account Maintenance	All accounts Base Fee plus..... Equity/Corporate Debt plus	\$270.00 75.00 75.00	First 2 Accounts Total Fee All Services..... All Accounts over 2	\$475.00 \$475.00 \$200.00
	Total	\$420.00	Total fee all services.....	
Safekeeping Fees	Per 1000 Shares or \$40,000 Face Value (charge/\$40,000 Face Value=charge/1000 Shares) \$0.08 per 1000 shares \$4000.00 maximum charge		Per 100 Shares or \$40,000 Face Value (charge/\$40,000 Face Value=charge/1000 Shares) 0.1 million shs. (\$60.00 min.*). 1-15 million shs..... 15-50 million shs..... 50-200 million shs..... 200-300 million shs..... 300 + million shs..... *Specialist, Market Maker & Trading Accounts are not subject to the minimum.	\$0.080 \$0.073 \$0.052 \$0.013 \$0.00652 \$0.0005
Transfer Withdrawal —Hard Copy Input..... —Tape Input or FTS	\$2.10 per item \$1.30 per item		\$4.00 per item \$1.50 per item	

The base account fee has been changed to consolidate the multiple Corporate Equity, Corporate Debt and Municipal Bond current individual service fees to a single access fee which includes all services currently offered by MSTC. In addition, This base fee has been significantly reduced for clients with more than 2 accounts.

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY—Continued

[1990 Price Revisions]

Service	1989 fee		1990 fee	
Check Issuance—if applicable —to transfer agent for transfer agent fees.	\$1.25 per check		\$2.50 per check	
Bearer Bond Safekeeping Position Fees	CUSIP with 1 Participant..... CUSIP with 2 Participants..... CUSIP with 3 or more Participants.....	\$2.00 \$1.75 \$1.10	CUSIP with 1 or 2 Participants..... CUSIP with 3 or more Participants.....	\$2.00 \$0.95
Bearer Bond Value	Per \$1000 face value/day \$0-\$500 million..... \$500 million-\$1 billion..... over \$1 billion.....	\$0.000430 \$0.000300 \$0.000295	Per \$1000 face value/day \$0-\$50 million..... \$50-\$100 million..... \$100-\$500 million..... over \$500 million.....	\$0.000603 \$0.000400 \$0.000367 \$0.000150
Bearer Bond Interest	\$3.00 per interest credit		\$3.50 per interest credit	
Legal Deposits	Items per Month 1-100..... next 3000..... over 4000.....	\$5.00 each \$3.00 each all items \$3.00 each	Items per Month 1-1000..... next 1000..... over 2000.....	\$5.00 each \$3.00 each all items \$3.00 each
Deposit Reclaim Charge	\$10.00 per item		\$20.00 per item	

MIDWEST SECURITIES TRUST COMPANY

[1990 New Services]

Legal deposits—no inspection.	\$1.50/item plus applicable deposit fee \$20.00/reject plus Transfer Agent fees
This new service allows participants to do their own inspection of legal items and receive Same Day or Next Day credit to their account at a substantial reduction in fees over our full legal deposit service.	
Legal Deposit Advisory Service.	\$2.00/deposit inquiry

This new service will allow participants to consult with MSTC regarding the legal and Transfer Agent requirements in order to process these deposits prior to shipping the securities for deposit under either of our legal deposit service programs.

[FR Doc. 90-2521 Filed 2-2-90; 8:45 am]

BILLING CODE 6010-01-M

[Rel. No. 34-27651; File No. SR-NYSE-90-02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Rule 351 Threshold Reporting Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on January 4, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 351 requires that members and member organizations promptly report to the Exchange certain specified matters or occurrences, e.g., major complaints, governmental investigations, allegations of violations of any securities law or regulation, etc. The report is usually made on a Form RE-3.

Specifically, paragraphs (a) (7) and (8) of Rule 351 require reports to be made whenever a member, member organization or associated person is a defendant or respondent in securities or commodities-related litigation or arbitration resulting in a judgment, award or settlement exceeding \$5,000 or is the subject of any claim for damages by a customer, broker or dealer exceeding \$5,000.

The proposed amendments would create a two-tier reporting requirement that would increase the \$5,000 threshold figure under paragraphs (a) (7) and (8) to \$15,000 for reportable occurrences involving individuals and to \$25,000 for reportable occurrences involving member organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C).

below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) **Purpose**—The purpose of the proposed amendments is to increase the threshold figure for reporting certain awards or claims under Rule 351(a) so as to more accurately reflect the realities of the current economic environment, without hindering the Exchange's ability to enforce compliance with its Constitution and rules and Federal securities laws. Additionally, \$15,000 and \$25,000 are more meaningful figures in terms of their financial impact on individuals and member organizations, respectively. The Exchange will continue to receive information concerning all customer complaints under the recently adopted reporting requirements of Rule 351(d). That section requires members and member organizations to report to the Exchange, on a quarterly basis, statistical information regarding customer complaints using certain product and problem codes established by the Exchange for such reporting. Rule 351(d) encompasses all relevant customer complaints, regardless of dollar figure. These filings are collated in an automated environment and used for such purposes as targeting member firms or their branch offices for examination when a concentration of complaints is observed.

(b) **Statutory Basis**—The proposed amendments are consistent with the requirements of the Act in that they are designed, in accordance with section 6(b)(5) of the Act, to prevent fraudulent

and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by requiring the reporting of matters indicative of improprieties. The proposed amendments to Rule 351 are also consistent with section 6(b)(1) of the Act in that they enhance the Exchange's capacity to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange, and section 6(b)(6) of the Act in that they provide that members and persons associated with members shall be appropriately disciplined for violations of the provisions of the Act, the rules or regulations thereunder, or the rules of the Exchange.

The proposed amendments to Rule 351 are consistent with the requirements set forth in section 17(a)(1) of the Act in that the Exchange will be better able to make records, as required therein, as necessary and appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 29, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-2522 Filed 2-2-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

January 30, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Air & Water Technologies Corporation, Common Stock, Class A, \$001 Par Value (File No. 7-5719).

VMS Mortgage Investment Fund, Common Stock, \$01 Par Value (File No. 7-5720).

Americus Trust for Coca-Cola Shares, Units, Score, Prime (File No. 7-5721).

Americus Trust for DOW Shares, Units, Score, Prime (File No. 7-5722).

Century Telephone Enterprises, Inc., Common Stock, \$1.00 Par Value (File No. 7-5723).

Dime Savings Bank of New York, FSB Common Stock, \$1.00 Par Value (File No. 7-5724).

First Wachovia Corporation, Common Stock, \$5.00 Par Value (File No. 7-5725).

Flowers Industries, Inc., Common Stock, \$.625 Par Value (File No. 7-5726).

Global Income Plus Fund, Inc., Common Stock, \$001 Par Value (File No. 7-5727).

Telecom USA, Inc., Common Stock, \$01 Par Value (File No. 7-5728).

Templeton Value Fund, Inc., Common Stock, \$01 Par Value (File No. 7-5729).

Thomas & Betts Corporation, Common Stock, \$.50 Par Value (File No. 7-5730).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 21, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-2523 Filed 2-2-90; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; The Washington Post Company, Class B Common Stock, \$1.00 Par Value (File No. 1-6714)

January 30, 1990.

The Washington Post Company ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on January 31, 1990. In

making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 21, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-2524 Filed 2-2-90; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public No. 1152]

Advisory Committee on International Investment, Subcommittee on Eastern Europe; Meeting

The Department of State will hold a meeting of the Subcommittee on Eastern Europe of the Advisory Committee on International Investment on February 28 from 9:30 a.m. to 12:00 noon. The meeting will be held in Room 1205 at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda is as follows:

9:30—Organization of the Committee

10:30—Discussion of topics for the Subcommittee's work

12:00—Meeting concludes

Access to the Department of State is controlled. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at (202) 647-1128 to arrange admittance. Please use the "C" Street entrance.

Dated: January 22, 1990.
Robert C. Reis, Jr.,
Executive Secretary.
[FR Doc. 90-2540 Filed 2-2-90; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX89-5; Notice 2]

Ferrari S.p.A.; Denial of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice denies the petition by Ferrari S.p.A. of Modena, Italy, for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems* for its model F40. The basis of the petition was that compliance would cause substantial economic hardship.

Notice of receipt of the petition was published on November 2, 1989, an opportunity afforded for comment (54 FR 46321).

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). Ferrari's total production "is about 4000", of which approximately 30% are manufactured for sale in the United States. However, Fiat S.p.A., a major vehicle manufacturer, holds a 90% interest in Ferrari. The threshold of eligibility would be exceeded if the production total of Fiat were added to that of Ferrari.

As discussed in Notice 1, NHTSA has determined that the threshold of eligibility is not exceeded. There are two general issues concerning whether Ferrari's eligibility is affected by its relationship with Fiat. The first issue is whether Ferrari can be considered the manufacturer of any vehicles other than the 4,000 units cited above, with the possible result that the 10,000 unit limit is exceeded. This question can be answered in the negative. It is only the manufacturer of vehicles bearing the Ferrari nameplate.

The second and more difficult issue is whether persons other than Ferrari can be considered to manufacture the 4,000 units. The National Traffic and Motor Vehicle Safety Act does not include any provision indicating that a person is manufacturer of a vehicle by virtue of ownership or control of another person that is a manufacturer.

NHTSA has stated, however, that a person may be a manufacturer of a vehicle manufactured by another person if the first person has a sufficiently substantial role in the manufacturing process that it can be deemed the sponsor of the vehicle. The agency considers the statutory definition of "manufacturer" (15 U.S.C. 1391(5)) to be sufficiently broad to include sponsors, depending on the circumstances. See 50 FR 14596, April 12, 1985, and a letter of September 18, 1987, to General Motors. In the present instance, the F40 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and the agency understands that the F40 was designed and engineered without assistance from Fiat. Further, the agency understands that such assistance as Ferrari may receive from Fiat relating to use of Fiat's test facilities and the like is an arms length transaction for which Ferrari reimburses Fiat. Accordingly, NHTSA concludes that Fiat is not a manufacturer of Ferrari vehicles by virtue of being a sponsor.

According to Ferrari, its F40 "is a vehicle designed primarily for competition and truly capable of being utilized for racing." Aware, however, that its purchasers would use it on the public roads, Ferrari attempted to develop a US version of the vehicle "in full compliance of all safety and emission applicable standards notwithstanding the great difficulties posed by the sophisticated composite production, the performance of the vehicle and the extremely low production volume." To that end "the economic evaluation of the costs sustained by Ferrari for the adaptation * * * to the USA specifications is well over \$6,000,000".

Ferrari had anticipated that the F40 would comprise 20 percent of its 1989 US sales, with production beginning in the summer of 1988 and completion a year later. It had intended producing 200 units in this period. But because of difficulties in obtaining electronic engine controls necessary to meet emission standards, and procuring composite body panels, it could not meet this schedule. Realizing that any F40 manufactured for the US market on or after September 1, 1989, would have to comply with the passive restraint requirements of Standard No. 208, it contracted with its supplier preparing systems for its other vehicles, AutoLiv-Klippan, "to develop a passive belt system also for the F40 model." Although the design system has been completed, AutoLiv cannot deliver the system to Ferrari before the summer of

1990 due to its commitments to Ferrari on its other US models, and to other manufacturers as well.

The petitioner has advised that the F40 cannot be retrofitted with an airbag system. Neither can it be retrofitted with an automatic belt system, which would require "substantial modifications not only to the outside fitting but also to the structure as: A pillar, roof structure, B pillar, etc.". As further evidence of its good faith attempts to conform, it submits that it has "promptly installed on its vehicles during the Phase-In period many more passive restraint systems than required by law, accumulating a large number of 'credits', to the number of 523. It regards this number as "especially high in consideration of a US production of just over 1000 vehicles per year."

Cognizant that many manufacturers who have petitioned the agency for hardship exemptions have had balance sheets showing continuing losses (Ferrari projects an income for 1989 of over \$10,000,000 without US F40 sales, and \$20,000,000 in income for the year its requested exemption would allow US sales of the F40), Ferrari bases its hardship argument on the need to begin to recover at the earliest possible time the \$6,000,000 it has expended on developing the US version of the F40. A denial would force it to scrap "or rework a great number of vehicles already partially assembled and not being able to readily manufacture the vehicle with passive belts." In addition, \$300,000 of parts and materials for active belts for the US cars would be wasted. It also believes that its dealers, who have invested in facilities dedicated to the F40, would also suffer economic losses.

Ferrari argued that an exemption would be in the public interest and consistent with the objectives of the Act. It believed that if an exemption is not granted, F40s that it has not manufactured to conform to US Federal safety and emission standards will be imported through the gray market. It argues that "curbing speculations and reducing the exposure of the public to questionable modified vehicles is in the public interest." It cites NHTSA's own statement (54 FR 35556) that one of the objectives of the Act was to afford a continuing wide choice of vehicles to the motoring public.

No comments were received on the petition.

In order to provide Ferrari with the exemption it requests, the agency is required by 15 U.S.C. 1410(a)(1)(A) to find that compliance would cause it "substantial economic hardship", and that Ferrari has, in good faith, attempted to comply with the standard. Further,

the agency is required by section 1410(a)(2) to find that the temporary exemption would be consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act. If the agency is unable to make one of the requisite findings, then it cannot provide the exemption.

The term "substantial economic hardship" is undefined by statute. Section 1410(e) does require a petitioner to submit "a complete financial statement showing the basis of the economic hardship", indicating the intent of Congress that the financial strength of an applicant should be the primary hardship determinant. In amplification, the regulation implementing the statute requires submission of income statements and balance sheets for the three fiscal years prior to filing the petition, and a hypothetical income statement showing the effect of a denial upon the petitioner. As Ferrari noted in its petition, many petitioners for hardship exemptions have had balance sheets showing continuing losses. That is correct; in administering the exemption authority over the 17 years of its existence, NHTSA has tended to regard a cumulative net loss position as substantially hampering the ability of a company to achieve timely compliance with the standard for which it has requested exemption. In short, a cumulative net loss has generally represented a *per se* showing of "substantial economic hardship", and an exemption has been granted when the three other requisite findings have been made. Ferrari, however, has shown an income exceeding \$10,000,000 in each of the past three fiscal years, and projects an income for 1989 of over \$10,000,000 without US sales of the F40. Clearly, Ferrari understands that if it is to prevail on its hardship argument, it must be on factors other than its immediate financial strength.

There are four such factors advanced by the petitioner. The first is that it needs to begin recovery at the earliest possible time of the \$6,000,000 it has expended on developing the US version of the F40. The second is that a denial would force it to scrap or rework a great number of partially assembled vehicles. The third is that \$300,000 of parts and materials for active belts for US cars would be wasted. The fourth is that its dealers, who have invested in facilities dedicated to the F40 would also suffer economic losses.

The agency has found none of these arguments persuasive. The chronology in Ferrari's petition indicates that its original intent was to produce the entire production run of F40s for the US market

before September 1, 1989, the effective date of the passive restraint requirements. It now intends to produce F40s meeting those requirements for the US market beginning a year after that date, on September 1, 1990. The scant legislative history that exists on the question indicates that the purpose of the hardship exemption authority was to "protect Checker Motor Co.'s ability to continue production of its automobiles while it toolled to adapt the new safety equipment, which it purchases from big automobile manufacturers, to its own automobiles." (Remarks of Rep. Springer, Congressional Record, October 13, 1973, 36047 and 36048). While Ferrari's position may appear analogous to that of Checker, it is factually distinguishable. Checker produced only one model, thus 100% of its production would have required an exemption, whereas Ferrari requires an exemption for a model that represents only 5 percent of its overall production (the petitioner's 4000 total production divided by the 200 units intended for the US market). Ferrari advances no argument why it must begin to recover its \$6,000,000 in US development costs at the earliest possible time. In fact, a denial only defers the beginning of the recovery of those sums for a period of time far less than a year (*i.e.*, from the date of denial of the petition until the late summer of 1990 when Ferrari will be able to install airbags). Similarly, any "losses" to the dealers in deferring the arrival of a conforming F40 is temporary in nature, because the rest of Ferrari's product line remains available. The costs of scrapping or reworking vehicles, Ferrari's second argument, has not been quantified, and therefore the effect of a denial cannot be judged. It would appear that those vehicles could be completed with the active restraint systems on hand, and sold in markets other than the U.S. However, the costs of scrapping or reworking vehicles, like the \$300,000 that represents sums expended in parts and materials for active belt systems, result from an initial decision *not* to conform with the passive restraint requirements, rather than being attributable to an initial inability to conform with Standard No. 208 in a timely manner due to a then-existing financial condition.

In considering the effects of the denial upon the petitioner, the agency has also considered the representation inferred in the hypothetical income statements that Ferrari's income for the next year with the exemption would be \$20,000,000, and \$10,000,000 without it. As the latter figure represents an equivalent of Ferrari's income for the

past three fiscal years, the "hardship" represented by the denial is not the creation of a net loss, but, in actuality, only a deferral of anticipated profits.

The agency concludes that a measure of economic hardship may result from the denial, but it cannot be characterized as "substantial", given the reason for the occurrence of the costs, Ferrari's current financial condition, and the continuing high demand for its products.

For the reasons discussed above, the agency is unable to make a finding of substantial economic hardship, and Ferrari's petition is denied. In so doing, it has not been necessary to make the other findings required by statute. However, NHTSA would like to address Ferrari's argument that a denial would result in the importation of grey market vehicles resulting in the exposure of the public to questionable modified vehicles. NHTSA disagrees with this argument. Beginning January 31, 1990, the provisions of Public Law 100-562

The Imported Vehicle Safety Compliance Act of 1988, become effective. Until a fully conforming F40 is available from Ferrari, a grey market F40 cannot be imported unless NHTSA has determined that its safety features comply, or are readily modifiable to comply, with all the Federal motor vehicle safety standards. In making such a determination with respect to Standard No. 208, NHTSA will consider the matters set forth in this petition. If an affirmative determination is made, the conformance work on any grey market F40 would be performed only by a person whose conversion abilities have been recognized by NHTSA by granting such person the status of a registered importer pursuant to the provisions of 49 CFR part 592.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50

Jerry Ralph Curry,
Administrator.

[FR Doc. 90-2564 Filed 2-2-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Refusal To Accept New Bonds Under 19 CFR 113.38

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice informs the public that no new bonds underwritten by Travelers Indemnity Company will be

accepted in the Southwest Region by virtue of 19 CFR 113.38.

FOR FURTHER INFORMATION CONTACT:

Theodore F. Doyle, U.S. Customs Service, 5850 San Felipe St., suite 500, Houston, Texas 77057-3012 (713-953-6964).

SUPPLEMENTARY INFORMATION: Under 19 CFR 113.38(c)(2), a Regional Commissioner of Customs may refuse to accept for filing any new bond underwritten by a surety that the Regional Commissioner finds to be significantly delinquent in more than one district within the Region. The Regional Commissioner of Customs, Southwest Region, found the Travelers Indemnity Company to be delinquent under that regulatory provision. The Regional Commissioner notified the surety of the intended action by letter dated January 12, 1990.

The text of that letter is as follows:

January 12, 1990

Certified P 453 820 327
Travelers Indemnity Company,
One Tower Square, Hartford, CT 06183.

Dear Sir: By letter dated December 20, 1989, you were afforded an opportunity to provide justification why sanctions should not be imposed.

Since neither payment nor sufficient justification has been received by January 11, 1990, the Southwest Region will instruct the District Directors, Southwest Region, not to accept any new Travelers Indemnity bonds for a period of five days commencing 12:01 AM C.S.T. Monday, January 29, 1990, and ending at 11:59 PM Friday, February 2, 1990, or until Travelers Indemnity has tendered payment of its obligations to U.S. Customs, whichever is later.

A copy of this notice is being sent to the Director, Carriers, Drawback and Bonds Division, Customs Headquarters, Washington, DC, for publication in the Customs Bulletin. Notice will also be given to the importing public by posting a copy of this decision in the Southwest Region Customhouses.

If you have any questions, you may call Theodore F. Doyle, Operations Officer, Southwest Region, at (713) 953-6964.

Sincerely,

John A. Burns for James C. Piatt,
Regional Commissioner.

As required by 19 CFR 113.38, the District Director of Customs has notified this Headquarters.

This Notice notifies the public of the Customs action.

Dated: January 29, 1990.

John Durant,

Director, Commercial Rulings Division.

[FR Doc. 90-2484 Filed 2-2-90; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; CIGNA Insurance Co. of Illinois

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27806 to reflect this addition:

CIGNA Insurance Company of Illinois.

Business Address: 1600 Arch Street, Philadelphia, PA 19103. Underwriting Limitation^b: \$2,557,000. Surety Licenses^c: IL. Incorporated IN: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: January 30, 1990.

Mitchell A Levine,

*Assistant Commissioner, Comptroller
Financial Management Service.*

[FR Doc. 90-2551 Filed 2-2-90; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1989 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; CIGNA Insurance Co. of Illinois

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27806 to reflect this addition: **CIGNA Insurance Company of Illinois.** Business Address: 1600 Arch Street, Philadelphia, PA 19103. Underwriting Limitation^b: \$2,557,000. Surety Licenses^c: IL. Incorporated in: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior

to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: January 30, 1990.

Mitchell A. Levine,

*Assistant Comptroller,
Financial Management Service.*

[FR Doc. 90-2550 Filed 2-2-90; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send

applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics

Revision

1. Veterans Benefits Administration.
2. Court Appointed Fiduciary's Account.

3. VA Form 27-4706C.

4. This form is used by the Fiduciary and Field Examination Program to provide the court appointed fiduciary of a VA beneficiary an acceptable format for providing accountings to the appointing court. These accountings are generally required by State law.

5. On occasion.

6. Individuals or households; State or local governments; Federal agencies or employees; and Non-profit institutions.

7. 3,628 responses.

8. ½ hour.

9. Not applicable.

[FR Doc. 90-2554 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send

NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics

Extension

1. Veterans Benefits Administration.
2. Application for Guaranty of Loan to Purchase Manufactured Home and/or Lot.

3. VA Form 26-8641.

4. Information collected is used by VA to determine whether a veteran applicant qualifies as a prospective borrower for mortgage insurance or guaranty on a loan to purchase a manufactured home and/or lot. This information request is authorized by 38 U.S.C. 1812.

5. On occasion.

6. Individuals or households and Businesses or other for-profit.

7. 100 responses.

8. 3/4 hour.

9. Not applicable.

[FR Doc. 90-2555 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics

New Collection

1. Veterans Benefits Administration.
2. Consumer Satisfaction Survey.
3. Not applicable.
4. Use of this telephone survey will involve consumers in the process of identifying service needs and timeliness requirements.
5. On occasion.
6. Individuals or households.
7. 2,400 responses.
8. 1/4 hour.
9. Not applicable.

[FR Doc. 90-2556 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number

of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503 (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics

Reinstatement

1. Veterans Benefits Administration.
2. Manufactured Home Appraisal Report.
3. VA Form 26-8712.
4. Appraisal report completed by VA fee and staff appraisers to establish the reasonable value of used manufactured home units proposed for financing under 38 U.S.C. 1812 and assure that units meet standards prescribed by the Secretary. Form is also used in appraisal of manufactured home units in foreclosure or repossession cases.
5. On occasion.
6. Individuals or households and Businesses or other for-profit.
7. 1,400 responses.
8. 1 1/2 hours.
9. Not applicable.

[FR Doc. 90-2557 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency

responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (203C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503 (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics

Extension

1. Veterans Benefits Administration.
2. Report of Treatment by Attending Physician.
3. VA Form Letter 29-551a.
4. The information collected on this form is from the attending physician and is used to determine the insured's eligibility for disability insurance benefits.
5. On occasion.
6. Individuals or households.
7. 20,277 responses.
8. 1/4 hour.
9. Not applicable.

[FR Doc. 90-2558 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary:

Frank E. Lally,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration.

2. Request for Organizational Data from Builder.

3. VA Form Letter 26-312.

4. Completed by builders and sponsors to identify individuals who have controlling, proprietary, or financial interest in their company. Information is used to determine eligibility for participation in the Loan Guaranty Program.

5. On occasion.

6. Businesses or other for-profit.

7. 10,000 responses.

8. ½ hour.

9. Not applicable.

[FR Doc. 90-2259 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 7, 1990.

By direction of the Secretary:

Frank E. Lally,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration.
2. Report of Treatment in Hospital.
3. VA Form Letter 29-551.
4. This form letter is used to collect information from the insured's hospital to determine his/her eligibility for a claim for disability insurance benefits.

5. On occasion.

6. Individuals or households.

7. 4,055 responses.

8. ½ hour.

9. Not applicable.

[FR Doc. 90-2560 Filed 2-2-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 24

Monday, February 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, February 7, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Hair Dryer Petition CP 89-3

The Commission will consider petition CP 89-3 from the Michele Snow Foundation to require detection circuit interrupters for hand-held hair dryers in order to protect against electrocution if the dryer fall into a bathtub or other accumulation of water, whether the switch that operates the hair dryer is in the on or off position.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

[FR Doc. 90-2718 Filed 2-1-90; 2:11 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, February 8, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: The staff will brief the Commission on regulatory options available to the Commission to address choking hazards associated with toys and other children's articles.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-2719 Filed 2-1-90; 2:11 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:41 p.m. on Tuesday, January 30, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Personnel Matter:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,470—

Investors Savings & Loan Association, El Reno, Oklahoma
and

United Federal Savings & Loan Association, Durant, Oklahoma
and

Vernon Savings & Loan, Dallas, Texas
and

Sunbelt Savings, FSB, Dallas, Texas.

Matters relating to the possible closing of certain insured banks.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointee), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 5526(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: January 31, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-2639 Filed 1-31-89; 5:11 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 30, 1990, 55 FR 3142.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:

January 31, 1990, 10:00 a.m.
CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG-6 for the agenda of January 17, 1990:

Item No. Docket No. and Company

CAG-6 RP87-30-000 (Phase II), Colorado Interstate Gas Co.

Lois D. Cashell,

Secretary.

[FR Dec. 90-2751 Filed 2-1-90; 4:05 pm]

BILLING CODE 6717-02-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board of Directors meeting will be held on February 12, 1990. The meeting will commence at 9:30 a.m.

PLACE: Washington Marriott Hotel, Salons D & E, Second Floor, 1221 22d St., NW., Washington, DC 20037, (202) 872-1500.

SATATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.
—December 15, 1989
3. Election of Board Chairman and Vice Chairman.
4. President's Report.
5. Discussion of LSC FY 1991 Budget Proposals and Action Thereon.
6. Discussion of the Corporation's Annual Audit and Action Thereon.
7. Review of Controversial Activity on the Part of LSC-funded Programs.

CONTACT PERSON FOR MORE INFORMATION:

Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: February 1, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-2750 Filed 2-1-90; 4:05 pm]

BILLING CODE 7050-01-M

Corrections

Federal Register

Vol. 55, No. 24

Monday, February 5, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP90-72-000]

Carnegie Natural Gas Co.; Filing

Correction

In notice document 90-2139 beginning on page 3251 in the issue of Wednesday, January 31, 1990, make the following correction:

On page 3251 in the third column, under the heading, "January 25, 1990," should read "January 24, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0004]

Drug Export; Theophylline Controlled Release Capsules 300 Mg

Correction

In notice document 90-777 appearing on page 1268 in the issue of Friday, January 12, 1990, make the following correction:

On page 1268, in the third column, in the second complete paragraph, in the third and fourth lines, "February 22, 1990" should read "January 22, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8265]

RIN 1545-AL16

Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions); Correction

Correction

In rule document 89-23719 beginning on page 41442 in the issue of Tuesday, October 10, 1989, make the following corrections:

§ 1.988-1T [Corrected]

1. On page 41443, in the first column, in amendatory instruction 3, in the fourth line, "1983" should read "1993".

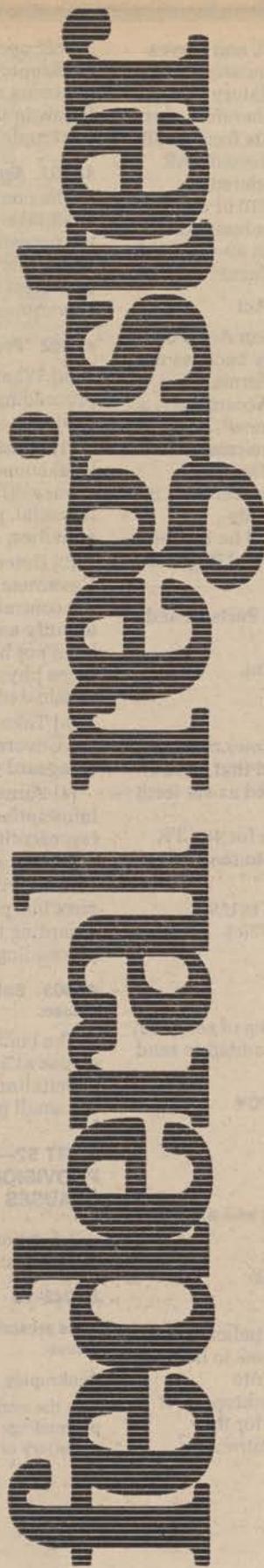
§ 1.988-5T [Corrected]

2. On the same page, in the second column, in amendatory instruction 5, in the second line, "(a)(5)(iv)" should read "(a)(5)(vi)".

3. On the same page, in the same column, in amendatory instruction 6, in the third line, "(b)(4)(vi)" should read "(b)(4)(iv)".

BILLING CODE 1505-01-D

Monday
February 5, 1990



Part II

Department of Defense General Services Administration National Aeronautics and Space Administration

**48 CFR Parts 42 and 52
Federal Acquisition Regulation (FAR);
Bankruptcy; Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 42 and 52****Federal Acquisition Regulation (FAR);
Bankruptcy**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) to add subpart 42.9, Bankruptcy, and a clause at 52.242-14, to provide guidance concerning the treatment of contractors who enter into bankruptcy. The purpose of such guidance is to enable the Government to deal with potentially significant events in a contractor's operation that could impact on the Government's ability to obtain the requisite contract performance and to provide procedural guidance for addressing such situations.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 6, 1990 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405. Please cite FAR Case 90-06 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 90-06.

SUPPLEMENTARY INFORMATION:**A. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed change does not impose any new requirements on

contractors, large or small, and serves only to clarify existing regulatory coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 90-06) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub.L. 98-511) is deemed to apply because this proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent *Federal Register* notice.

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: January 23, 1990.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 42—CONTRACT
ADMINISTRATION**

2. Subpart 42.9, consisting of sections 42.900 through 42.903, are added to read as follows:

SUBPART 42.9—BANKRUPTCY

Sec.

- 42.900 Scope of subpart.
- 42.901 General.
- 42.902 Procedures.
- 42.903 Solicitation provision and contract clause.

Subpart 42.9—Bankruptcy**42.900 Scope of subpart.**

This subpart prescribes policies and procedures regarding actions to be taken when a contractor enters into proceedings relating to bankruptcy. It establishes a requirement for the contractor to notify the contracting

officer upon filing a petition for bankruptcy. It further establishes minimum requirements for agencies to follow in the event of a contractor bankruptcy.

42.901 General.

The contract administration office shall take prompt action to determine the potential impact of a contractor bankruptcy on the Government in order to protect the interests of the Government.

42.902 Procedures.

- (a) When notified of bankruptcy proceedings, agencies shall, as a minimum—

(1) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (e.g. contracting, financial, property) and affected buying activities;

(2) Determine the amount of the Government's potential claim against the contractor (in assessing this impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);

(3) Take actions necessary to protect the Government's financial interests and safeguard Government property;

(4) Furnish pertinent contract information to the legal counsel representing the Government.

(b) The contracting officer shall consult with legal counsel, whenever possible, prior to taking any action regarding the contractor's bankruptcy proceedings.

42.903 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.242-14, Bankruptcy, in all solicitations and contracts exceeding the small purchase limitation in 13.000.

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

3. Section 52.242-14 is added to read as follows:

52.242-14 Bankruptcy.

As prescribed in 42.903, insert the following clause:

Bankruptcy (January 1990)

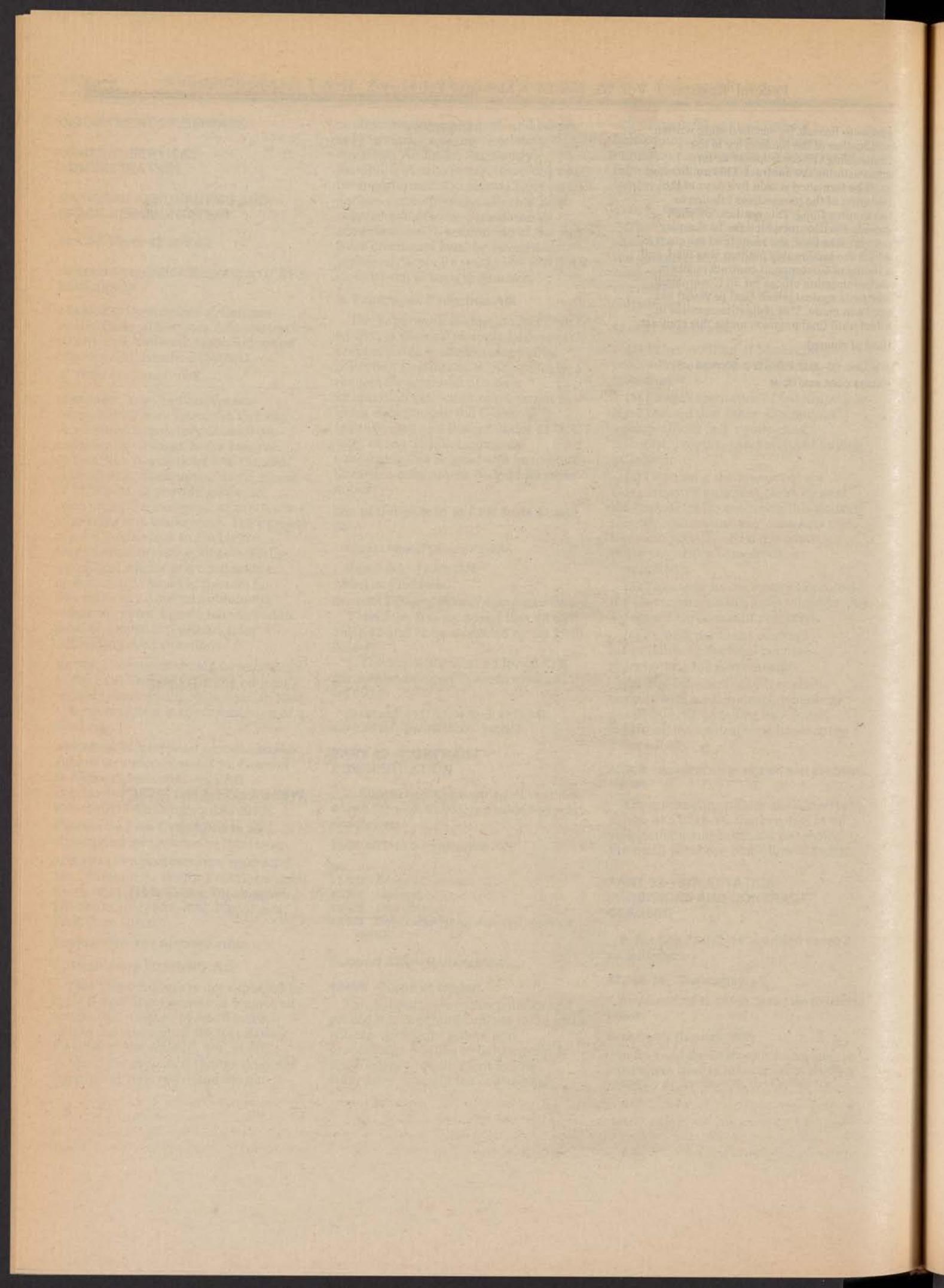
In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor

agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

[FR Doc. 90-2341 Filed 2-2-90; 8:45 am]

BILLING CODE 6820 JC-M



Regulations

Monday
February 5, 1990.

Part III

Department of Defense General Services Administration National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation (FAR);
Threshold; Proposed Rule

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 52****Federal Acquisition Regulation (FAR);
Threshold**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to the Federal Acquisition Regulation (FAR) clause at 52.242-2 to raise the dollar threshold from \$10,000 to \$25,000 for withholding from payment due to delays in furnishing a production progress report required under the contract.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 6, 1990 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89-94 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-94.

SUPPLEMENTARY INFORMATION:**A. Background**

Regulatory dollar thresholds were reviewed for currency and appropriateness. The dollar threshold in the clause at 52.242-2, Production Progress Reports, was established in 1970. Inflation would yield a present value of \$32,400. For consistency with other FAR dollar thresholds, the threshold is proposed to be increased to \$25,000.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it raises a dollar threshold and only applies to delinquent deliveries. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-94) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the

proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 23, 1990.

*Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

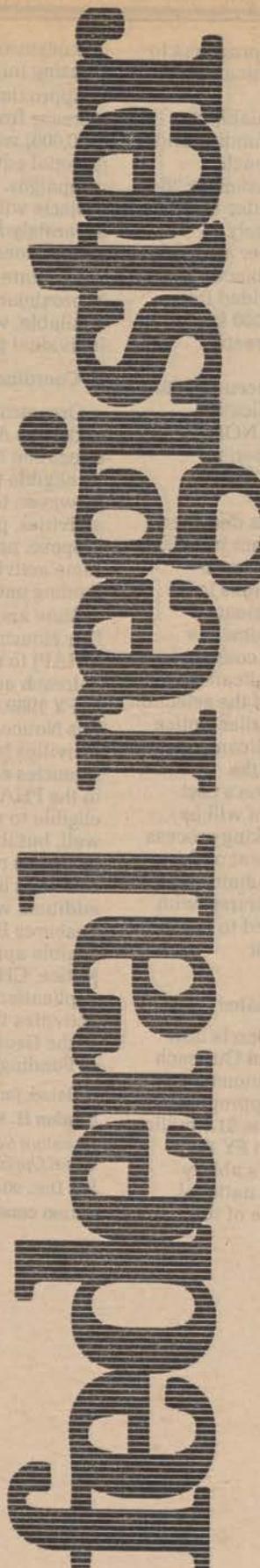
52.242-2 [Amended]

2. Section 52.242-2 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing the date "(APR 1984)" and inserting in its place "(JAN 1990)"; by removing in paragraph (b) the dollar figure "\$10,000" and inserting in its place "\$25,000"; and by removing the derivation line following "(End of clause)".

[FR Doc. 90-2343 Filed 2-2-90; 8:45 am]

BILLING CODE 6820-JC-M

Monday
February 5, 1990



Part IV

Department of Housing and Urban Development

**Office of the Assistant Secretary for Fair
Housing and Equal Opportunity**

Fair Housing Initiatives Program; Competitive Solicitation; Notice

DRA DRAFT OF PROPOSED REGULATIONS
REGULATORY ANALYSIS

NOTICE OF PROPOSED RULEMAKING
REGULATORY ANALYSIS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Fair Housing and Equal Opportunity**

[Docket No. N-90-2063; FR-2709-N-3]

Fair Housing Initiatives Program; Competitive Solicitation**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.**ACTION:** Amended notice of funding availability.**SUMMARY:** This Notice revises, increases funding available for, and sets the application deadline for, the Notice of Funding Availability published on November 28, 1989 (54 FR 49030).**FOR FURTHER INFORMATION CONTACT:** Marion F. Connell, Director, Programs Division, Office of Fair Housing and Equal Opportunity, Room 5212, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone: (202) 755-0455 (Voice and TDD). (This is not a toll-free number.) Application kits may be requested in writing or by telephone from the person listed above. To ensure a prompt response, it is suggested that requests for application kits be made by telephone. (Previous FHIP applicants will automatically receive a copy of the application kit.)**DATES:** An application must be submitted on or before March 7, 1990, unless it qualifies for a late application exception as specified in the application kit, and is received before fund award determinations are made.**SUPPLEMENTARY INFORMATION:** On February 10, 1989 (54 FR 6492), HUD published a final rule implementing the Fair Housing Initiatives Program (FHIP) authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Under FHIP, HUD provides funding to State and local governments or their agencies, and to other public or private entities

formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

A Notice of Funding Availability announcing \$1.7 million in funding under FHIP's Education and Outreach Initiative was published November 28, 1989 (54 FR 49030). That Notice invited applications for approximately 35 awards averaging \$75,000 per award for State, regional and local projects. The November NOFA also provided for awards totaling up to \$700,000 for national education and outreach campaigns.

By a Notice published December 28, 1989 (54 FR 53377), the application deadline for the November NOFA was extended for an indefinite period. Today's document reopens the application period.

Except as modified in this document, all of the requirements set out in HUD's November 28, 1989 NOFA remain applicable to funding decisions to be made under this announcement. Applicants are urged to review the November 28 Notice in the course of preparing their funding applications.

By way of clarification of the selection criteria described in the earlier Notice and in 24 CFR 125.106, applicants should be aware that, as a part of the assessment of an application's cost-effectiveness, consideration will be given in the rating and ranking process to the planned apportionment of the project's budget between administrative costs and program expenditures, with higher point values assigned to projects with lower expenditures for administrative costs.

I. Program Total and Estimates

Approximately \$3.6 million is now available for Education and Outreach funding. The previously announced \$1.7 million from the FY 1989 appropriation has been combined with the \$1.9 million of Education and Outreach FY 1990 funding to maximize HUD's ability effectively to coordinate a national strategy during the balance of the

demonstration period for the Fair Housing Initiatives Program.

Approximately \$1.8 million (an increase from the previously announced \$700,000) will be reserved for funding national education and outreach campaigns. Applications for national projects will be scored and ranked separately from State, local or regional applications.

For State, regional or local campaigns, approximately \$1.8 million will be available, with a \$75,000 cap on individual grants.

II. Coordination of Activities

Organizations and agencies funded under the April 26, 1989 Notice for the Education and Outreach Initiative will be eligible to apply under this Notice. However, to avoid duplicate funding of activities, previous awardees cannot propose, nor can they be funded for, the same activities for which they received funding under the April 26, 1989 Notice.

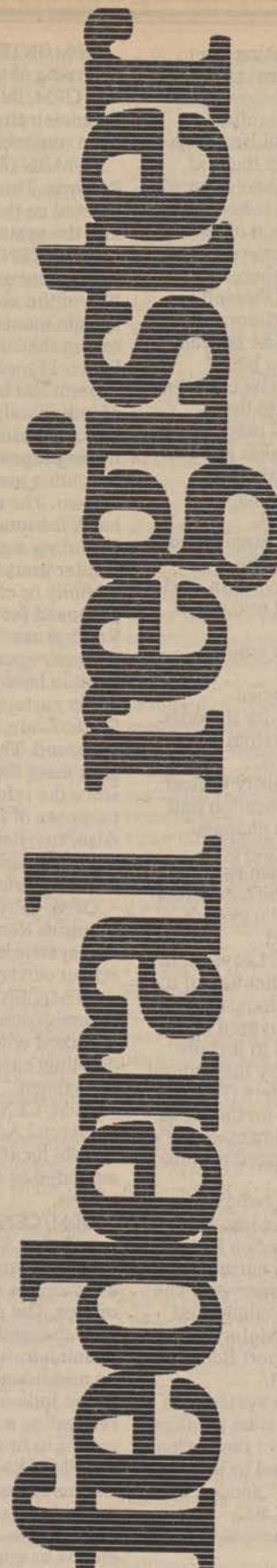
State and local agencies funded by the Fair Housing Assistance Program (FHAP) to carry out education and outreach activities with incentive funds in FY 1989 are eligible for funding under this Notice, provided that they apply for activities not previously funded. Agencies eligible for incentive funding in the FHAP program for FY 1990 will be eligible to apply under this Notice as well, but the activities for which FHIP funds are requested must not duplicate activities being funded by FHAP. In addition, while Community Housing Resource Boards (CHRBs) are generally eligible applicants for funding under this Notice, CHRBs are not invited to submit applications for education and outreach activities that they proposed in response to the December 12, 1989 CHRB Notice of Funding Availability (54 FR 51110).

Dated: January 30, 1990.

Gordon H. Mansfield,*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 90-2514 Filed 2-2-90; 8:45 am]

BILLING CODE 4210-28-M



Monday,
February 5, 1990

Part V

Office of Personnel Management

Privacy Act of 1974; Systems of Records; Notices

OFFICE OF PERSONNEL MANAGEMENT**Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Uses**

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of notices of systems of records, proposed routine uses for various systems of records, and elimination of three of its systems of records.

SUMMARY: This notice provides an accurate and complete text, with administrative changes, of the Office of Personnel Management's notices for its Internal, Central, and Governmentwide systems of records. This notice also proposes new routine uses for identified systems of records, and eliminates three systems of records, one of which is no longer in use by OPM and two whose responsibility now resides within the Office of Government Ethics, an independent Government agency. This action effects the administrative changes and makes readily available in one issue of the *Federal Register* an accurate and complete text of the notices for use by individuals and by agency Privacy Act officers.

DATES: The notices with the administrative (non-substantive) changes are effective on February 5, 1990. The proposed routine uses will become effective, without further notice, on April 6, 1990 unless comments dictate otherwise.

ADDRESSES: Written comments may be sent or delivered to: Assistant Director for Workforce Information, Room 7494, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor (202) 632-4455.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (the Office) last completely published its Governmentwide systems in 1984, and last published its Internal and Central systems in 1983. Since those publications, the Office has made both substantive and non-substantive changes to its systems and has added a Governmentwide system (OPM/GOVT-10, Employee Medical File System Records) in 1985. Thus, to have a complete and accurate copy of the notices, a user would need to have several different *Federal Register* notices. To ensure that users have a copy of the current text of each of the

notices, the Office is publishing the complete text of all its system notices.

None of the proposed changes in this notice is considered a substantial alteration of the systems. Rather, they result from: (1) Omissions in the text when last published, (2) a more accurate description of the retention schedules, (3) changes in the designation of system managers and location of records, (4) changes in the procedure whereby a requester identifies himself/herself to the system manager, (5) additions of clarifying language to specific sections of some notices to provide a better understanding of what is to be conveyed by that particular section, (6) the deletion of three systems of records (OPM/INTERNAL-12, Speaker Resume Records; OPM/GOVT-4, Executive Branch Public Financial Disclosure Records; and OPM/GOVT-8, Confidential Statements of Employment and Financial Interests), (7) the renumbering of two other systems, and (8) the addition of a limited number of routine uses.

A brief description of the major changes follows:

OPM/INTERNAL-1, Defense Mobilization Emergency Cadre Records. The system location and system manager have been changed.

OPM/INTERNAL-3, Security Officer Control Files. The system location and system manager have been changed.

OPM/INTERNAL-4, Employee Occupational Health Program Records. The system manager and the categories of individuals covered by the system have been slightly amended.

OPM/INTERNAL-5, Pay, Leave, and Travel Records. The identification of the system location has been changed. The categories of individuals covered by the system has been expanded to include those individuals covered by the Federal Employees Retirement System (FERS) and to include information on the leave transfer program. The system manager's identification has been changed to reflect the current title.

OPM/INTERNAL-6, Appeal and Administrative Review Records. The system manager's identification has been changed to reflect the current title.

OPM/INTERNAL-10, [Reserved]. The reserving of this number is eliminated and OPM/INTERNAL-13, Motor Vehicle Operator and Accident Report Records has been renumbered OPM/INTERNAL-10. Within this system, the system location and the system manager have been changed to reflect the current title. A statement was added to the "record access procedures" section to allow the Office to cite 5 U.S.C. 552a(d)(5) if a request for access to those records is made.

OPM/INTERNAL-11 [Reserved]. The reserving of this number is eliminated and OPM/INTERNAL-14, Administrative Grievance Records has been renumbered OPM/INTERNAL-11.

OPM/INTERNAL-12, Speaker Resume Records. This system of records is deleted as these records no longer exist and the system is no longer required.

OPM/CENTRAL-1, Civil Service Retirement and Insurance Records. The title of the system location and the system manager have been changed to reflect the current title. The citing of the Federal Employees Retirement (FER) System has been added to the categories of individuals covered by the system, to the categories of records in the system, to the purpose section of the notice, and to routine uses "a" and "ii" for the system. The authority for maintenance has been amended. New routine use "jj" regarding a garnishment, attachment, or similar proceeding to enforce an alimony or child support obligation is proposed for addition to this system. Routine use "kk" regarding disclosure to a former spouse when necessary to explain how that former spouse's benefit under certain provisions of 5 United States Code, is computed is also proposed. These new proposed routine uses meet the compatibility criteria since the information is collected for the purposes of the proposed routine uses. Also, two new record source categories are added as places where information in the system can be obtained.

OPM/CENTRAL-2, Complaints and Inquiries Records. The system location and system manager are amended to reflect current titles and offices.

OPM/CENTRAL-4, Inspector General Investigations Case Files. One category of record within this system, call detailing case records, is dropped from the system.

OPM/CENTRAL-5, Intergovernmental Personnel Act Assignment Records. The system location and system manager are amended to reflect the current titles and offices.

OPM/CENTRAL-6, Administrative Law Judge Application Records. The system location and system manager are amended to reflect the current titles and offices. The categories of records section was changed to include applicants for Administrative Law Judge positions and an additional data element was added for an individual to provide when either requesting access to or amendment of a record in this system.

OPM/CENTRAL-7, Litigation and Claims Records. The categories of individuals covered by the system were amended to include administrative claims or appeals, or other actions. The

retrievability section was changed to indicate that files are also retrieved by case name and case number.

OPM/CENTRAL-9, Personnel Investigations Records. The system location and system manager's identification are changed to reflect the current title and office. Other changes reflecting automation to the system, include slight modifications to the storage, safeguards, and retention and disposal sections. The retention and disposal section was amended regarding the length of time the material will be used as well as the name to retrieve these records. Notification, record access, and contesting record procedures sections are amended by listing a new address to write regarding information within this system.

OPM/CENTRAL-10, Director of Federal Executive Institute Alumni. The system location and system manager's address are changed to reflect the current information.

OPM/CENTRAL-11, Presidential Management Intern Program Records. The system location and system manager's address are changed to reflect the current information.

OPM/CENTRAL-12, Survey Information Records. The system's address is changed to reflect the current information.

OPM/CENTRAL-13, Executive Personnel Records. The system location and system manager are changed to reflect the current information. The category of individuals covered section is changed to include participants and graduates of Office-approved agency Senior Executive Service candidate development programs.

OPM/GOVERNMENT-1, General Personnel Records. The system manager's office designation is changed to reflect the current location. A new category of record covered by this system consisting of records relating to classified information non-disclosure agreements is added. Routine use "ii" is proposed to allow records within this system to be disclosed to various Federal, state, or local licensing boards when the records reflect on the qualifications of an individual seeking to be licensed. This routine use is also being added to the OPM/GOVT-2, Employee Performance File System as routine use "p." Routine use "jj" is proposed to allow records within this system to be made available to contractors, grantees, or volunteers performing a contract, grant, service, or job for the Federal government. This will enable individuals who do not meet the definition of a Federal employee, but who have a legitimate right to deal with these records in order to accomplish that responsibility, to have access to the

records. For example, a student volunteer who is not a Federal employee, but is working in a personnel office and reviews Official Personnel Folders technically could not review such records as the volunteer does not come within the "need to know" provision of the Privacy Act (5 U.S.C. 552a(b)(1)). This proposed routine use is also being added to the OPM/GOVT-2 system of records as routine use "q" and to the OPM/GOVT-10, Employee Medical File System Records as routine use "u" for a similar reason. Routine use "11" is proposed to allow the disclosure of the records within this system to any governmental entity or an agent of such a governmental entity, when necessary to locate the individuals who are owed money or property by the governmental entity or financial institution. These disclosures will occur when there are dormant bank accounts or other unclaimed real or personal property and the individuals need to be contacted in order that the property be claimed. An identical routine use also identified as "11" is proposed for the OPM/CENTRAL-1 system of records in order to locate individuals covered by that system for the same purpose as expressed immediately above.

The new proposed routine uses for the specified Governmentwide systems of records meet the compatibility criteria, since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosures will not result in any unwarranted adverse effects on personal privacy.

OPM/GOVT-2, Employee Performance File System Records. In addition to the two proposed routine uses discussed above, the retention and disposal section is amended to clarify how the ratings and plans of Senior Executive Service (SES) individuals who transfer to another position in the SES are to be handled.

OPM/GOVT-3, Records of Adverse Actions and Actions Based on Unacceptable Performance. The system manager and address are changed to reflect the current title and location.

OPM/GOVT-4, Executive Branch Public Financial Disclosure Records and Other Ethics Program Records. This system of records is eliminated from OPM's control as the Office of Government Ethics now has program responsibility for these records.

OPM/GOVT-6, Personnel Research and Test Validation Records. The system location, and system manager and address are changed to reflect the current designations.

OPM/GOVT-7, Applicant Race, Sex, National Origin, and Disability Records.

The system location, and system manager and address are changed to reflect the current designations.

OPM/GOVT-8, Confidential Statements of Employment and Financial Interests. This system of records is eliminated from OPM's control as the Office of Government Ethics now has the program responsibility for these records.

OPM/GOVT-10, Medical File System Records. As discussed above, routine use "u" is proposed for this system of records.

A complete list of all Office systems of records is published below. The complete text of the notices follows.

Office of Personnel Management.
Constance Berry Newman,
Director.

OPM Systems of Records:

OPM/Internal-1 Defense Mobilization Emergency Cadre Records.

OPM/Internal-2 Negotiated Grievance Procedure Records.

OPM/Internal-3 Security Control Files.

OPM/Internal-4 Employee Occupational Health Program Records.

OPM/Internal-5 Pay, Leave, and Travel Records.

OPM/Internal-6 Appeal and Administrative Review Records.

OPM/Internal-7 Complaints and Inquiries Records.

OPM/Internal-8 Employee Counseling Services Program Records.

OPM/Internal-9 Employee Locator Card Files.

OPM/Internal-10 Motor Vehicle Operator and Accident Report Records.

OPM/Internal-11 Administrative Grievance Records.

OPM/Central-1 Civil Service Retirement and Insurance Records.

OPM/Central-2 Complaints and Inquiries Records.

OPM/Central-3 Federal Executive and SES Candidate Development Program Records.

OPM/Central-4 Inspector General Investigation Files.

OPM/Central-5 Intergovernmental Personnel Act Assignment Records.

OPM/Central-6 Administrative Law Judge Application Records.

OPM/Central-7 Litigation and Claims Records.

OPM/Central-8 Privacy Act/Freedom of Information Act (PA/FOIA) Case Records.

OPM/Central-9 Personnel Investigations Records.

OPM/Central-10 Directory of Federal Executive Alumni.

OPM/Central-11 Presidential Management Intern Program Records.

OPM/Central-12 Survey Information Records.

OPM/Central-13 Senior Executive Service Records.

OPM/GOVT-1 General Personnel Records.

OPM/GOVT-2 Employee Performance File System Records.

OPM/GOVT-3 Records of Adverse Actions and Actions Based on Unacceptable Performance.
 OPM/GOVT-4 [Reserved].
 OPM/GOVT-5 Recruiting, Examining and Placement Records.
 OPM/GOVT-6 Personnel Research and Test Validation Records.
 OPM/GOVT-7 Applicant Race, Sex, National Origin, and Disability Status Records.
 OPM/GOVT-8 [Reserved].
 OPM/GOVT-9 Files on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.
 OPM/GOVT-10 Employee Medical File System Records.

OPM/INTERNAL-1**SYSTEM NAME:**

Defense Mobilization Emergency Cadre Records.

SYSTEM LOCATION:

Security Division, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain the name, address, telephone number, and private automobile information on each member of the Defense Mobilization Cadre.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Federal Civil Defense Act of 1950.

PURPOSE:

The records serve to identify and register members of the two emergency cadres. The originals and one copy of the records are maintained in the Office's Mobilization Office files (alphabetically and by cadre) for administrative purposes. The third copy is sent to the OPM Relocation Site for use in granting access to the site in the event cadre members must relocate under emergency conditions. The records are a source of personal data for preparation of Federal Emergency Identification Cards, carried by cadre members to facilitate necessary travel under emergency conditions and formation of carpools as might be practical in the event of an emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigation,

prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. By the National Archives and Records Administration in records management inspections.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained on cards.

RETRIEVABILITY:

Records are retrieved by individual name and emergency cadre.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an emergency cadre member. Expired records are burned.

SYSTEM MANAGER AND ADDRESS:

Chief, Security Division, Office of Personnel Management, 1900 E. Street, NW, Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system of records contains information about them should contact the system manager indicated above. Individuals must furnish their full names for their records to be located and identified.

RECORDS ACCESS PROCEDURE:

Office employees wishing to request access to records about them should contact the system manager indicated above. Individuals must furnish their full

names for their records to be located and identified.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Since all record information is provided by the individual employee who is the subject of the record, most record corrections can be handled through established administrative procedures for updating the records. However, Office employees wishing to contest records about them under provisions of the Privacy Act should contact the system manager indicated above. Individuals must furnish their full name for the records to be located and identified.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

OPM/INTERNAL-2**SYSTEM NAME:**

Negotiated Grievance Procedure Records.

SYSTEM LOCATION:

Assistant Director for Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC. 20415, and Office regional administrative offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employee who have filed grievances under a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an employee's grievance filed under procedures established by labor-management negotiations. The records may include information such as: Employee's name, social security number, grade, job title, employment history, arbitrator's decision or report, record of appeal to the Federal Labor Relations Authority, and a variety of employment and personnel records associated with the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Section 7121, title 5, U.S. Code.

PURPOSE:

These records are used to process an employee's grievance filed under a negotiated grievance procedure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. By the Department of Labor in carrying out its function regarding labor-management relations in the Federal service.

b. To disclose information to officials of labor organization recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested in the course of resolving a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. By the National Archives and Records Administration in records management inspections.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose in response to a request for discovery or for appearance of a

witness information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after the close of the fiscal year in which a final decision was issued. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals who file a grievance under a negotiated procedure are aware of that fact and have been provided access to the record. They may, however, contact the system manager indicated above, or

the Office regional office where the grievance was processed regarding the existence of such records about them. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Approximate date of closing of the grievance.
- d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Individuals who file a grievance under a negotiated grievance procedure are aware of that fact and have been provided access to the record. However, after the grievance has been closed, an individual may request access to the official copy of the grievance record by writing the appropriate system manager or Office regional office, as indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Approximate date of closing of the grievance.
- d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of an administrative, judicial, or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents that action of the agency or administrative body ruling on the case and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the appropriate system manager or OPM regional office indicated in the Notification Procedure section.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Approximate date of closing of the grievance.
- d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.
- b. Testimony of witnesses.
- c. Union officials.
- d. Office of Personnel Management officials.
- e. Department of Labor, Federal Labor Relations Authority, or arbitration officials involved in the grievance.

OPM/INTERNAL-3

SYSTEM NAME:

Security Officer Control Files.

SYSTEM LOCATION:

Security Division, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415 and Office Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of disks, cards, and file folders of active, inactive, and pending employees filed alphabetically and containing date of birth, social security number, classification as to position sensitivity, types and dates of investigations, investigative reports including those from Federal law enforcement agencies, Department of Defense, and internal inquiries, dates and levels of clearances, and names of agencies and the reason why they were provided clearance information on Office employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Executive Order 10450 and Executive Order 12065.

PURPOSE:

These records are used exclusively by Office Security Officers and the employees of Security Offices for administrative reference in connection with controlling position sensitivity and personnel clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

a. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request in connection with the hiring

or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearance, to enable Office employees to have access to classified data or areas where their official duties require such access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on disks, cards, and in file folders.

RETRIEVABILITY:

Records are retrieved by the name and date of birth of the individuals on whom they are maintained.

SAFEGUARDS:

The disks, cards, and file folders are stored in fire-resistant safes contained within a secured area, in lockable metal file cabinets, or in secured rooms. The disks, cards, and file folders do not leave the security office.

RETENTION AND DISPOSAL:

Most records are retained for five years after the individual leaves the Office and then are disposed of by erasing the disks or burning the cards. Folders containing investigative reports are transferred with the employee when reassigned in the Office or returned to the Office's Division of Personnel Investigations when the individual leaves OPM.

SYSTEM MANAGER AND ADDRESS:

Chief, Security Division,
Administration Group, Office of

Personnel Management, 1900 E Street, NW, Washington, DC 20415 for Central office employees. Regional Directors for regional office employees.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager as indicated. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate system manager as indicated. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate system manager as indicated. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

RECORD SOURCE CATEGORIES:

- a. The individual to whom the information applies.
- b. The Office's investigative files maintained by the Office of Personnel Investigations.
- c. Employment information maintained by the Office's Director of Personnel or regional personnel offices.
- d. Officials of the Office.
- e. Federal law enforcement agencies, Department of Defense, and through external and internal inquiries.

OPM/INTERNAL-4

SYSTEM NAME:

Employee Occupational Health Program Records.

SYSTEM LOCATION:

Associate Director for Administration, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415 for Central office employees. Other Office employees receive health services from other agencies, such as the Public

Health Service or the General Services Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are those of the following who have received health services under the Federal Employee Occupational Health Program:

a. Central office employees of the Office (whether actually employed at 1900 E Street, NW, or elsewhere in the Washington, DC area), who have received health services at the Office's Health Unit.

b. Employees of other organizations located in the OPM building at 1900 E Street, NW., who have received health services at the Office's Health Unit. These organizations include the Presidential Committee on White House fellowships and the Presidential Committee on Personnel Interchange.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of employee utilization of services provided under the Office's Occupational Health Program. These records contain the following information:

a. Medical history and other biographical data on those individuals requesting employee health maintenance physical examinations.

b. Test reports and medical diagnosis based on employee health maintenance physical examinations or health screening program (tests for single medical conditions or diseases).

c. History of complaint, diagnosis, and treatment of injuries and illness cared for at the Health Unit.

d. Vaccination Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

5 U.S.C. 7901, as further defined in OMB Circular No. A-72.

PURPOSE:

These records document employee utilization of health services provided under the Office's Occupational Health Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To refer information required by applicable law to disclosed to a Federal, State, or local public health service agency, concerning individuals who have contracted certain communicable diseases or conditions. Such information

is used to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on cards and in folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual to whom they pertain.

SAFEGUARDING:

These records are maintained in a secured room with access limited to Health Unit personnel whose duties require access.

RETENTION AND DISPOSAL:

Records of the Central Office Health Unit are maintained up to 6 years from the date of the last entry. Employees are given their records on request upon separation, otherwise the records are burned approximately three months after separation.

SYSTEM MANAGER AND ADDRESS:

Chief, Health Unit, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager. Individuals must furnish the following information for

their records to be located and identified:

- a. Full name.
- b. Any former name.
- c. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Any former name.
- c. Date of birth.

Any individual requesting access must also follow the Office's Privacy Act regulation regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Any former name.
- c. Date of birth.

An individual requesting amendment must also follow the Office's Privacy Act regulation verification of identity and amendment of records (5 CFR Part 297).

RECORD SOURCE CATEGORIES:

- a. The individual to whom the information pertains.
- b. Laboratory reports and test results.
- c. Office Health Unit physicians, nurses and other medical technicians who have examined, tested, or treated the individual.
- d. The individual's coworkers or supervisors.
- e. The individual's personal physician.
- f. Other Federal employee health units.

OPM/INTERNAL-5

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Office of Finance and Administrative Services, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, and in the office where the individual is currently employed for use by timekeeper, budget and finance, or travel personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave, and travel. This includes information such as: Name; date of birth; social security number; home address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual rate, usage, and balances; Civil Service Retirement and Federal Retirement System (FERS) contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employee's Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bonds allotments; union and management association dues withholding allotments; travel expenses; and information on the leave transfer program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

31 U.S.C. 66a; 5 U.S.C. 5501 et seq., 5525 et seq., 5701 et seq., and 6301 et seq.; Executive Order 9397; Pub. L. 100-202; and Pub. L. 100-440.

PURPOSE:

These records are used to administer the pay, leave, and travel requirements of the Office of Personnel Management. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

- a. By the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.
- b. By the Department of the Treasury to issue checks and U.S. Savings Bonds.
- c. By State offices of unemployment compensation with survivor annuity or health benefits claims or records reconciliations.
- d. By Federal Employee's Group Life Insurance or Health Benefits carries in connection with survivor annuity or health benefits claims or records reconciliations.
- e. To disclose information to the Internal Revenue Service and State and local tax authorities.
- f. To provide officials of labor organizations recognized under 5 U.S.C. chapter 71 with information as to the

identity of Office employee contributing union dues each pay period and the amount of dues withheld from each contributor.

g. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose information to any source from which additional information is requested relevant to an Office determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

j. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

k. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

l. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

m. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

n. By the National Archives and Records Administration in records management inspections.

o. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the

function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

p. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

q. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

r. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

s. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

t. To disclose, annually, pay data to the Social Security Administration and the Department of the Treasury as required.

DISCLOSURES TO CONSUMER REPORTING AGENCIES: DISCLOSURES TO CONSUMER REPORTING AGENCIES PURSUANT TO 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders and loose leaf binder and on cards and magnetic tapes.

RETRIEVABILITY:

These records are retrieved by the names, social security numbers, or Office of Personnel Management employee identification numbers of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, in accordance with GSA General Records Schedule 2. Disposal of manual records is by shredding or burning; magnetic tapes are erased.

SYSTEM MANAGER AND ADDRESS:

Assistant Director of Finance and Administrative Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information on them should contact the system manager indicated above, or the Office regional office where the individual is or was employed.

Individuals must furnish the following for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Office employment identification number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager indicated above, or the Office regional office where the individual is or was employed.

Individuals must provide the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Office employment identification number.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the system manager indicated above, or the Office regional

office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Office employment identification number.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

- a. The individual to whom the record pertains.
- b. Office officials responsible for pay, leave, and travel requirements.
- c. Other official personnel documents of the Office.

OPM/INTERNAL-6**SYSTEM NAME:**

Appeal and Administrative Review.

SYSTEM LOCATION:

Office of Personnel and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or Office regional offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to various appeal or administrative review procedures available to OPM employees. These appeals or administrative review procedures include adverse action appeals initiated prior to September 9, 1974, which were processed under the Office's internal appeals system; reconsiderations of acceptable level of competence determinations for within-grade increases; impartial reviews of performance ratings; and internal appeals of position classification decisions. The system also contains records and documentation of the action upon which the appeal or review procedure was based (e.g., 90-day notices of warning of unsatisfactory performance rating).

Note: The system does not include:

- a. Appeal or complaint records covered by the Merit Systems Protection Board's system of Appeals Records; or
- b. Records for grievances processed under OPM's administrative grievance procedure or under the grievance system negotiated by the Office and a recognized labor organization, which are covered under the OPM/INTERNAL-3 and OPM/INTERNAL-11 systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for Maintenance of the system includes the following with any revisions and amendments:

5. U.S.C. 1302, 3301, 3302, 4305, 5115, 5335, 7501, 7512, and Executive Order 10577.

PURPOSE(S):

These records are used to process the various appeals or administrative reviews available to the Office employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office who made the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Administration in records management inspections.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information of officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, reviews of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Services Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Adverse action appeals initiated prior to September 9, 1974, which were processed under the Office's internal appeals system are retained for 7 years after the closing of the case. Other records in the system are maintained for a maximum of 4 years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the records. They may, however, contact the system manager indicated above, or the OPM regional office where the action was processed, regarding the existence of such records about them. They must furnish the following information for their records to be located and identified.

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an appeal or administrative review procedure record by contacting the system manager or appropriate Office regional office. Individuals must provide the following information for their records to be located and identified.

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the system manager or appropriate Office regional office. Individuals must furnish the following information for their records to be located and identified.

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

- a. The individual to whom the records pertain.
- b. OPM officials involved in the appeal or administrative procedure.
- c. Other official personnel records of the Office.

OPM/INTERNAL-7

SYSTEM NAME:

Complaints and Inquiries Records.

SYSTEM LOCATION:

Office of Personnel and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 and Office regional personnel offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OPM employees about whom complaints or inquiries have been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information or correspondence concerning an individual's employment status or conduct while employed by the Office. Examples of these records include: correspondence from Federal employees, members of Congress, or members of the public alleging misconduct of an Office employee; and miscellaneous complaints not covered

by the Office's formal or negotiated grievance procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

Executive Order 11222.

PURPOSE:

These records are used to take action on or respond to a complaint or inquiry concerning an Office employee or to counsel the employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the individual employee, e.g., on the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the issuance of a license, grant, or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court, or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

e. By the National Archives and Records Administration in records management inspections.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection

with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

h. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

i. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on cards and in file folders which are separate from the employee's Official Personnel Folder.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are filed in lockable metal filing cabinets with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

These records are disposed of upon the transfer or separation of the employee or after 1 year, whichever is earlier. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Personnel and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system contains information about them should contact the system manager or the appropriate Office regional personnel office.

Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to their records should contact the system manager or the appropriate Office regional personnel office. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.

Individual requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Office employees wishing to request amendment of their records should contact the system manager or the appropriate Office regional personnel office. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.

Individuals must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual to whom the information pertains.
- b. Federal employees, Members of Congress, creditors, or members of the public who submitted the complaint or inquiry.
- c. Office officials.
- d. Other source from whom information was requested regarding the complaint or inquiry.

OPM/INTERNAL-8

SYSTEM NAME:

Employee Counseling Services Program Records.

SYSTEM LOCATION:

Office of Personnel and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, and Office of Regional Offices.

Note: In order to meet the statutory requirement that agencies provide appropriate prevention, treatment, and rehabilitation programs and services for employees with alcohol or drug problems, and to better accommodate establishment of a health service program to promote employees' physical and mental fitness, it

may be necessary for an agency to negotiate for use of the counseling staff of another Federal, State, or local government, or private sector agency or institution. This system also covers records on Office employees that are maintained by another Federal, State, or local government, or private sector agency or institution under such a negotiated agreement.

When one or more Federal agencies wish to jointly make similar arrangements for employees, in order to ensure compliance with the law and to remote the agency health service program, the Office may, on behalf of the participating agencies, negotiate an agreement that provides such services through another Federal, State, or local government, or private Sector agency or institution. However, when such is the case, this system will not cover records pertaining to employees of other participating agencies. Such records are considered by the Office as being part of the employing agency's internal system of records covering agency employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, State, local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee made by the counselor. Additionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101 and 1108, 42 U.S.C. 4541 and 4561, and 44 U.S.C. 3101.

PURPOSE:

These records are used to document the nature of the individual's problem and progress made and to record an individual's participation in and the results of community or private sector treatment or rehabilitation program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Department of Justice or other

appropriate Federal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Office in connection with the individual.

b. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by Office, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Office having a bona fide need for them or to the person to whom they pertain, is rarely made as disclosures of information pertaining to an individual with a history of alcohol or drug abuse and must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations 42 CFR part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of Office policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets labeled confidential with access strictly limited to employees directly involved in the Office's alcohol and drug abuse prevention function (as that term is defined in 42 CFR Part 2).

RETENTION AND DISPOSAL:

Records are maintained for three to five years after the employee's last contact with the Office's prevention function or, if the employee leaves the agency, until the Employee Counseling Service Program Annual Report for the fiscal year in which separation occurred is prepared. Records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Personnel and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system of records contains information about them should contact the Office of Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to records pertaining to them should contact the Office of Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified.

- a. Name.
- b. Date of birth.

An individual must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURES:

Office employees wishing to request amendment to these records should contact the Office's Employee Counseling Service Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.

An individual must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employee Counseling Services Program staff member who records the counseling session, and therapists or institutions providing treatment.

OPM/INTERNAL-9

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Personnel and administrative offices of the Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 and Office regional and area offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Personnel Management.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual Office employees. The system also contains the home address and telephone number of the employee and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

5 U.S.C. 301.

PURPOSE:

Information is collected for this system for use in preparing telephone directories of the extensions of Office employees. The records also serve to identify an individual for Office officials to contact, should an emergency of a medical or other nature involving the employee occurs while the employee is on the job. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose, in response to a request for discovery or for appearance

of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained on cards or in an automated format.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of the Office. Expired records are destroyed by burning, shredding, or erasure of tapes/disks.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Personnel and EEO, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system contains information about them should contact the appropriate Office administrative officer where employed. Individuals must supply the following information for their records to be located and identified.

a. Full name.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to records about them should contact the appropriate Office administrative officer where employed. Individuals must supply the following information for their records to be located and identified:

a. Full name.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURES:

Office employees may amend information in these records at any time by resubmitting updating information. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the appropriate OPM

administrative officer where employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual who is the subject of the record.

OPM/INTERNAL-10**SYSTEM NAME:**

Motor Vehicle Operator and Accident Report Records.

SYSTEM LOCATION:

Assistant Director, Office of Finance and Administrative Services, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, and Office regional administrative offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents related to the authorization and issuance to an individual of a Government motor vehicle operator's permit; also included are reports, correspondence, and fiscal documents concerning automobile accidents occurring in a Government owned or leased automobile or in a privately owned vehicle while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

Chapter 171 of title 28, United States Code.

PURPOSE:

These records serve to document issuance of a Government motor vehicle operator's permit; accident reports and related documents may be used in claims settlement litigation regarding an accident involving a Government motor vehicle or privately owned vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information any source from which additional information is requested (to extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), when necessary to obtain information relevant to an office decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a grant or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an injury from the congressional office made at the request of that individual.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

e. By the National Archives and Records Administration in records management inspections.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by influence.

g. To disclose accident report record information to officials of labor organizations recognized under the chapter 71, title 5, U.S.C. when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of jobs, or the award of a contract, license, grant, or other benefit.

i. To disclose information to the General Services Administration about accidents involving Government-owned or leased automobiles.

j. To disclose information to insurance carriers about accidents involving private-owned vehicles.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on indexed application cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Motor vehicle operator records are maintained for three years after the separation of the employee (operator) and are destroyed by shredding.

Accident reports are maintained for six years after the date of the report and are destroyed by shredding, except in cases involving litigation. In cases involving litigation, these records are to be maintained for seven years.

SYSTEMS MANAGER AND ADDRESS:

a. For motor vehicle operator records: Assistant Director, Office of Financial and Administrative Services, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

b. For accident report records: Office of the General Counsel, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office as follows:

a. For accident report records, contact the system manager indicated.

b. Motor vehicle operator records for current or former Central Office employees, contact the system manager indicated.

c. Motor vehicle operator records for current regional and former Office employees, contact the Regional

Direction of the region in which employed.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate office as follows:

a. For accident report records, contact the system manager indicated.

b. For motor vehicle operator records of current or former Central Office employees, contact the system manager indicated.

c. For motor vehicle operator records of current or former regional employees, contact the Regional Director of the region in which employed.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

Note: The Office of General Counsel, pursuant to 5 U.S.C. 552a(d)(5) reserves the right to refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate office as follows:

a. For accident report records, contact the indicated system manager.

b. For motor vehicle operator records of current or former Central Office employees, contact the system manager indicated.

c. For motor vehicle operator records of current or former regional employees, contact the Regional Director of the region in which employed.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

- a. The individual to whom the record pertains.

- b. Office employees and other parties involved in the accident.
- c. Witnesses to the accident.
- d. Police reports and reports of investigations conducted by Office investigators.
- e. Officials of the Office and the General Services Administration.

OPM/INTERNAL-11**SYSTEM NAME:**

Grievance Records.

SYSTEM LOCATION:

These records are located in the personnel or other designated office, OPM Central and Regional offices where the grievance was filed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Office employees who have filed grievances, under OPM's administrative grievance procedure in accordance with Part 771 of the Office's regulations (5 CFR part 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by OPM employees under administrative procedures and in accordance with part 771 of the Office's regulations. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system does not include files and records of any grievance filed under negotiated procedures with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for Maintenance of the system includes the following with any revisions and amendments:

5 CFR part 771.

PURPOSE:

The records are used to process grievances submitted by OPM employees, for personal relief in a matter of concern of dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

- a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when

the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

- b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

f. By the National Archives and Records Administration records management inspections.

g. By the Office in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit System Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible

discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

j. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To disclose in response for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Personnel and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

RECORD ACCESS PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the personnel or designated office where the action was processed. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records which have been the subject of an administrative, judicial, or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Information in this system of records is provided by the following:

- a. The individual on whom the record is maintained.
- b. Testimony of witnesses.
- c. Agency officials.
- d. Related correspondence from organizations or persons.

OPM/CENTRAL-1**SYSTEM NAME:**

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director for Retirement and Insurance, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Certain records pertaining to State income tax withholdings from annuitant payments are located with State Taxing Offices. Certain information concerning enrollment/change in enrollment in a health plan under the Federal Employee Health Benefits Program may be located at other agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Former Federal employees and members of Congress who performed service subject to the Civil Service Retirement (CSR) or Federal Employees Retirement (FERS) system.
- b. Current Federal employees who have:
 - (1) Performed Federal service subject to the CSR system other than with their present agency; or
 - (2) Filed a designation of beneficiary for benefits payable under the CSR system; or
 - (3) Requested the Office to review claim for health benefits made under the Federal Employees Benefits Program; or
 - (4) Enrollment/changed enrollment in a plan under the Federal Employees Health Benefits Program; or
 - (5) Filed a service credit application in connection with former Federal service; or
 - (6) Filed an application for disability retirement with the Office and are waiting final decision, or whose disability retirement application has been disapproved by the Office.
- c. Former Federal employees who died subject to or who retired under the CSR or FER system, or their surviving spouses and/or children, who have received or are receiving CSR or FER benefits, Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.
- d. Former Federal employees who died subject to or who retired under a Federal Government retirement system other than CSR or FER system, or their surviving spouses and/or children, who have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.
- e. Applicants for Federal employment found unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises those retirement service history records of employees' service in the Federal Government other than for the agency in which they may presently be employed. Also included in the system are current personnel data pertaining to active United States Postal Service employees who, by virtue of the provisions set forth in 5 U.S.C. 2105(e), are not considered civil service employees. It also contains information concerning health benefit enrollment/change in enrollment, and information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees that the Office administers. Also included are medical records and supporting evidence on those individuals whose application for disability retirement has been rejected. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Office, are included in this system. These records contain the following information:

- a. Documentation of Federal service subject to the CSR or FER system.
- b. Documentation of service credit and refund claims made under the CSR or FER system.
- c. Documentation of voluntary contributions made by eligible individuals.
- d. Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims (after receipt by the Office), and designations of beneficiary.
- e. Claim review files pertaining to requests that claims made under the Federal Employee Health Benefits program be reviewed by the Office.
- f. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program.
- g. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Government retirement system other than the CSR or FER system, or for compensationers and their survivors under the Office of Workers Compensation Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Section 3301 and chapters 83, 84, 87, and 89 of title 5, United States Code; Pub. L. 83-598, 84-356, 86-724, and 94-455; and Executive Order 9397.

PURPOSES:

These records provide information and verification on which to base entitlement and computation of CSR or FER and survivors' benefits, Federal Employees Health benefits and enrollments, and Federal Employees Group Life Insurance benefits, and to withhold State income taxes from annuitant payments. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research. These records also provide information and verification concerning enrollment/change in enrollment in a plan under the Federal Employees Health Benefit Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under the Office's or the recipient's benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers' Compensation Programs; Veterans Administration Pension Benefits Program; HHS' Social Security Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the CSR or FER system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency.

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, Social Security Numbers, and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or

agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls, and, if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954, as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or the Office Medical Officers to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, or former employee, for enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under:

(1) Medical examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office becomes aware of an indication of a violation or potential

violation a civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested relevant to the Office determination on an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and the type of information requested.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

n. To disclose information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

p. To disclose to a Federal agency, in response to its request, information in connection with (1) the hiring, retention, separation, or retirement of an employee; (2) the issuance of a security clearance; (3) the reporting of an investigation of an employee; (4) the letting of a contract; (5) the classification of a job; or (6) the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the Office determines that the information is relevant and necessary to the requesting party's decision on the matter.

q. By the National Archives and Records Administration in records management and inspections.

r. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies to support the function for which the records were collected and maintained.

s. By the Office, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

u. To disclose to another agency, or to an instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Office specifying the particular portion(s) of the record desired (including an address) and the law enforcement activity for which the record is sought.

v. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information to provide consideration in connection with the collection of a debt due the United States.

w. To disclose information in valid emergency situations when consent cannot readily be obtained and instant action is required, to persons who have a need to know, if the particulars of the disclosure then are transmitted to the subject's last known address.

x. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

y. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

z. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

aa. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs to contact the former employee concerning

a possible threat to his or her health or safety.

bb. To disclose to an allottee, as defined in 5 CFR 831.1501, the name, address, and the amount withheld from an annuitant's benefits, pursuant to 5 CFR 831.1501 *et seq.* as an allotment to that allottee to implement the program of voluntary allotments authorized by 5 U.S.C. 8345(h) or 8465.

cc. To disclose to a State agency responsible for the collection of State income taxes the information required by an Agreement to Implement State Income Tax Withholdings from Civil Service Annuites entered pursuant to section 1705 of Pub. L. 97-35 or 5 U.S.C. 8469 to implement the program of voluntary State income tax withholding required by 5 U.S.C. 8345(k) or 8469.

dd. To disclose to the Social Security Administration, the social security numbers of civil service annuitants to determine (1) their vital status as shown in the Social Security Master Records; (2) whether recipients of the minimum annuity are receiving at least the Special Primary Insurance Amount benefit from the Social Security Administration; and (3) whether civil service retirees with post-1956 military service credit are receiving benefits from the Social Security Administration.

ee. To disclose to a requesting agency, organization, or individual, the home address and other relevant information on those individual who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from, a health hazard while employed in the Federal work force to protect the health and safety of the affected employees.

ff. To disclose information contained in the Retirement Annuity Master File; including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees to agencies to help eliminate fraud and abuse in the benefit programs administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government.

gg. To disclose information contained in the Retirement Annuity Master File, including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees and their survivors to requesting States to help eliminate fraud and abuse in the

benefit programs administered by the States (and those States to local governments) and to collect debts and overpayments owed to those governments and their components.

hh. To disclose to a Federal agency, a person or an organization contracting with a Federal agency for rendering collection services within the purview of section 13 of the Debt Collection Act of 1982, in response to a written request from the head of the agency or his or her designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (1) The debtor's name, address, social security number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

ii. To disclose information contained in the Retirement Annuity Master File, upon written request, to state tax administration agencies, for the express purpose of ensuring compliance with state tax obligations by persons receiving benefits under the Civil Retirement System or the Federal Employees Retirement System, and to prevent fraud and abuse, but only the following data elements: Name, correspondence address, date of birth, sex, social security account number, annuity rate, commencing date of benefits, and retirement code (type of retirement).

jj. To disclose information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or child support obligation.

kk. To disclose to a former spouse when necessary to explain how that former spouse's benefit under 5 U.S.C. 8341(h), 8345(j), 8445, or 8467 was computed.

ll. To disclose to a Federal or State agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal agency, state or local agency, or by a financial institution or similar institution.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained on magnetic tapes, discs, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, social security number, date of birth, and/or claim number of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, life insurance, health benefits, and tax withholdings are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Retirement and Insurance, Office of Personnel Management, 1900 E Street NW., Washington, DC.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Name, including all former names.
- b. Date of birth.
- c. Social security number.
- d. Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Name, including all former names.
- b. Date of birth.
- c. Social Security number.
- d. Name and address of office in which currently and/or formerly employed in the Federal Service.
- e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Name, including all former names.
- b. Date of birth.
- c. Social security number.
- d. Name and address of office in which currently and/or formerly employed in the Federal service.
- e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

- a. The individual to whom the information pertains.
- b. Agency pay, leave, and allowance records.
- c. National Personnel Records Center.
- d. Federal civilian retirement systems other than the CSR/FER systems.
- e. Military retired pay system records.
- f. Office of Workers' Compensation Benefits Program.
- g. Veterans Administration Pension Benefits Program.
- h. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.
- i. Health insurance carriers and plans participating in the Federal Employee Health Benefits Programs.
- j. The Office of Federal Employees Group Life Insurance.
- k. Official Personnel Folders.
- l. The individual's co-workers and supervisors.

- m. Physicians who have examined or treated the individual.
- n. Former spouse of the individual.
- o. State courts or support enforcement agencies.

OPM CENTRAL-2**SYSTEM NAME:**

Complaints and Inquiries Records.

SYSTEM LOCATION:

Assistant Director for Agency Compliance and Evaluation, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street

NW., Washington, DC 20415, and OPM regional offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed complaints or submitted an inquiry about conditions in the agency or agency personnel actions affecting the individual, e.g., allegations or improper promotion actions, reduction-in-force procedures, or Fair Labor Standards Act (FLSA) procedures.

b. Persons who are not current or former Federal employees who have complained or inquired about an agency decision or action related to the general area of personnel management.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a complaint made to the Office under its regulations. The records may include information and documents regarding the actual personnel action of the agency in question and the decision or determination rendered by an agency regarding the issue raised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

Title 5, U.S.C., Sections 1302 and 3502; Executive Orders 9830, 10577, and 11491; and Pub. L. 93-259.

PURPOSE:

The principal purpose for which these records are established is to retain a record of correspondence with an individual, over a complaint or inquiry, as a reference should that individual again contact the Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

- c. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
- d. To disclose information to any source from which additional information is requested in the course of adjudicating an appeal or complaint, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.
- e. To disclose information to a Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.
- f. By the National Archives and Records Administration in records management inspections.
- g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in executive files, in file folders, binders, or on index cards.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDING:

The records are located in lockable metal filing cabinets or in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

- a. Records related to most complaints or inquiries about conditions at an agency or an agency's personnel actions affecting an individual, are maintained until the second calendar year following closing action on the complaint.
- b. Records related to Fair Labor Standard Act complaints are maintained indefinitely.
- c. All records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Agency Compliance and Evaluations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, with the following exception:

Individuals who have filed complaints or inquiries with an OPM regional office should contact the regional office.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. If appropriate, the agency in which employed when the complaint or inquiry was filed and the approximate date.
- c. Kind of response received.

RECORD ACCESS PROCEDURE:

Individuals who have filed a complaint or inquiry about an agency personnel action or about conditions existing in an agency will receive a response and, if necessary, be provided access to any other pertinent record. After a response to a complaint or inquiry has been received, an individual may request access to the official copy of the correspondence record by writing the system manager or OPM regional office indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. If appropriate, the agency in which employed when the complaint or inquiry was filed and the approximate date.
- c. Kind of response received.

Individuals requested access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their correspondence file records will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the nature of the complaint or inquiry, the identity of the individual, and the response furnished. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. If appropriate, the agency in which employed when the complaint or inquiry was filed and the approximate date.
- c. Kind of response received.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

- a. Individuals to whom the record pertains.
- b. Agency and/or Office of Personnel Management offices.
- c. Official documents relating to the complaint.
- d. Related correspondence from organizations or persons.

OPM/CENTRAL-3

SYSTEM NAME:

Federal Executive Development Program and SES Candidate Development Program Records.

SYSTEM LOCATION:

Assistant Director for Executive Administration, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees at the GS-15 or equivalent level, who applied and were nominated by their agency for the Federal Executive Development Program or the SES Candidate Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards, and career interests of nominees, their agency recommendations for the Program, and supervisory evaluations. Also included are records of the evaluation process used by the selection panel in choosing the finalists and data on assignments and progress under the Program.

Note: This system does not include records containing the applications and related information on employees who were not nominated by their employing agencies to the Office of the Federal Executive Development Program or the SES Candidate Development Program. These records which never come to the Office, are agency maintained records, and may be published as an agency system of records subject to the Privacy Act or may be part of OPM's Government-wide system of General Personnel Records (OPM/GOVT-1).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions and amendments:

Executive Orders 11315, 12027, and 9397.

PURPOSE:

These records are maintained and used by the Office to select final candidates for the Federal Executive Development Program and the SES

Candidate Development Program or arrange the work assignments of those selected, and to track their progress on assignments under the Program. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used.

a. To disclose information to individuals responsible for making the final selection of candidates for the Program.

b. To disclose information to agencies in which the selected employee is or will be performing work assignment under the Program.

c. To disclose information to the individual's employing agency regarding his or her nomination, work assignments, progress under the Program, and for necessary personnel administrative purposes (pay matters, personnel actions, etc.).

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to another federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

h. By the National Archives and Records Administration in records management inspections.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to

the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to the Merit System Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

When not in use, records are kept in locked cabinets. Records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 5 years. Disposal is by shredding.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Executive Administration, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following information for their record to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Social security number.

d. Program year (year nominated or selected for program).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Program year (year nominated or selected for program).

An individual requesting access must also follow the Office's Privacy Act regulation regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Program year (year nominated or selected for program).

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR Part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, his or her supervisor and other management officials, the selection panel, or is obtained from agency records.

OPM/CENTRAL-4

SYSTEM NAME:

Inspector General Investigations Case Files.

SYSTEM LOCATION:

Office of the Inspector General, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees, certain current and former employees of other Federal agencies, annuitants, and contractors with the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files contain individual identifiers such as name, date of birth, social security number, employee number, civil service retirement case file

number, and related personal information. Case files are created pertaining to matters including the following:

- (1) Fraud against the Government; (2) Theft of Government property; (3) Misuse of Government property; (4) Improper personal conduct; (5) Irregularities in awarding contracts; (6) Improper personnel practices; and (7) Initiatives arising from the President's Council on Integrity and Efficiency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 301, and Pub. L. 100-504.

PURPOSE:

Information in case files serves to document the outcome of investigations, reporting the results of investigations to other Office components or agencies for their use in evaluating their programs and imposition of any civil or administrative sanctions, and, if appropriate, reporting the results of the investigations to other agencies for any action deemed appropriate, and for retaining sufficient information to fulfill the reporting requirements of Pub. L. 95-452, Section 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information—

- a. To designated officers and employees of agencies, offices, and other establishment in the executive, legislative, and judicial branches of the Federal Government having an interest in the individual for employment purposes, including a security clearance or access determination, and the need to evaluate qualifications, suitability, and loyalty to the United States Government.
- b. To designated officers and employees of agencies, offices, and judicial branches of the Federal Government when such agency, office, or establishment conducts an investigation of the individual for granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.
- c. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the

investigation, and to identify the type of information requested.

d. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the Office becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To another Federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to judicial proceeding or to comply with issuance of a subpoena.

g. To provide information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized, when:

- (1) The agency, or any component thereof is a party to litigation; or

- (2) Any employee of the agency in his or her official capacity is a party to litigation; or

- (3) Any employee of the agency in his or her individual capacity, where the Department of Justice or the agency has agreed to represent the employee, or

- (4) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purposes for which the records were collected.

- h. To the National Archives and Records Administration for records management inspections.

- i. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

- j. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

- k. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations.

investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

- l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission.

- m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on index cards, on microfilm, or disks.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, employee number, case file number, or other unique identifying number, or by a combination of such identifiers.

SAFEGUARDS:

Records are maintained in file cabinets secured by combination locks, secured microfilm storage cabinets, and in computers with access limited to only certain employees through the use of individual identifiers and passwords.

RETENTION AND DISPOSAL:

Case files are retained while the person is under investigation and for 10 years after final disposition of the case or any litigation of the matter is completed.

SYSTEM MANAGER AND ADDRESS:

Inspector General, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system contains information about them should contact the system manager. So that the record can be located and identified, the requester must furnish the following information:

- a. Full name.
- b. Date of birth and social security number.
- c. Signature.
- d. Any additional information (e.g., type of investigation conducted,

employee number or annuitant CSR number) that the requester believes might be helpful.

RECORD ACCESS PROCEDURE:

Specific records in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552(c)(3) and (d) regarding access to records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, which follows, indicates the kinds of records exempted. Individuals wishing to request access to any records pertaining to them should contact the system manager. Requesters must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth and social security number.
- c. Signature.
- d. Any additional information (e.g., type of investigation conducted, employee number or annuitant CSR number) that requester believes may be helpful.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific records in this system have been exempted from the Private Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, which follows, indicates the kinds of records exempted. Individuals seeking to amend their records should contact the system manager. Requesters must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth and social security number.
- c. Signature.
- d. Any additional information (e.g., type of investigation conducted, or employee number or annuitant CSR number) that the requester believes may be helpful.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific records in this system have been exempted from the Privacy Act provisions at 5 U.S.C. 552(d) regarding amendment of records. The section of this notice titled Systems Exempted

from Certain Provisions of the Act, which follows, indicates the kinds of records exempted. Individuals seeking to amend their records should contact the system manager. Requesters must furnish the following information for their records to be located and identified:

- a. Full time.
- b. Date of birth and social security number.
- c. Signature.
- d. Any additional information (e.g., type of investigation conducted, or employee number or annuitant CSR number) that the requester believes may be helpful.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from—

- a. The individual who is the subject of the case file.
- b. The individual's supervisor and co-workers.
- c. Other Federal and non-Federal sources who have information relevant to the case.
- d. Official records of the Office or another Federal agency.
- e. Non-Government record sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Office has claimed exemptions from the access (including access to an accounting of disclosure) and amendment provisions of the Privacy Act (5 U.S.C. 552a [c](3) and [d]) for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7). During the course of developing a case file covered under this system, copies of the exempt records from these other systems may become part of the file. To the extent that this occurs, the Office has claimed the same exemptions for these copies as they have for the original documents.

Additionally, information within the scope of these exemptions may be developed by the Inspector General's staff during an investigation. These same exemptions are claimed for this developed information when the information is—

- a. Classified material and pertains to the national defense and foreign policy (552a(k)(1)); or
- b. Investigatory material compiled for law enforcement purposes (5 U.S.C. 552a(k)(2)); or

c. Relates to providing protective services to the President or others (5 U.S.C. 552a(k)(3)); or

d. Required by statute to be maintained and used solely as statistical records (5 U.S.C. 552a(k)(4)); or

e. Investigatory material used in making suitability and qualification determinations and its release would reveal the identity of an individual who furnished information under an express or implied promise of confidentiality (5 U.S.C. 552a(k)(5)); or

f. Testing or examining material the release of which would compromise the objectivity or fairness of the testing or examination process (5 U.S.C. 552a(k)(6)); or

g. Evaluation material used to determine potential for promotion in the armed services, but only to the extent that release would reveal the identity of an individual who furnished information under an express or implied promise of confidentiality (5 U.S.C. 552a(k)(7)).

OPM/CENTRAL-5

SYSTEM NAME:

Intergovernmental Personnel Act Assignment Records.

SYSTEM LOCATION:

Assistant Director for Career Entry and Employee Development, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Courtesy copies of mobility assignment agreements may be sent to Office regional offices for information purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have completed or are presently on an assignment in a State or local government agency, an educational institution, or in Indian tribal government, or other organizations under the provisions of the Intergovernmental Personnel Act (IPA).

b. Current or former State or local government or educational institution employees, employees of Indian tribal governments, or other organizations who have completed or are presently on an assignment in a Federal agency under the provisions of the Intergovernmental Personnel Act (IPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records are comprised of a copy of the individual's IPA assignment agreement between a Federal agency and a State or local government, educational institution, Indian tribal government, or other organization;

biographical and background information about the assignees; and records of interviews with assignee(s) which may be conducted after the IPA assignment has been completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments.

The Intergovernmental Personnel Act of 1970 (84 Stat. 1909), 5 U.S.C. 337-3376, and E.O. 11589.

PURPOSE:

These records are maintained to document and track mobility assignments (including extensions, modifications, and terminations thereof) made under the Intergovernmental Personnel Act (IPA). Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

e. By the National Archives and Records Administration in records management inspections.

f. By the Office of Personnel Management to locate individuals for personnel research or survey response and in the production of summary

descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an Office decision regarding possible termination of an assignment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

Records are maintained on cards and in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 5 years from the signing of the agreement. Records are destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Career Entry and Employee Development, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Federal agency involved in the assignment.
- c. Non-Federal organization involved in the assignment.
- d. Date of each assignment.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for

their records to be located and identified:

- a. Full name.
- b. Federal agency involved in the assignment.
- c. Non-Federal organization involved in the assignment.
- d. Date of each assignment.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

- a. Full name.
- b. Federal agency involved in the assignment.
- c. Non-Federal organization involved in the assignment.
- d. Date of each assignment.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in these records is provided by the individual subject of the records, by officials in the agencies, educational institutions, Indian tribal governments or other organizations where the individual is employed and where the individual is serving on the IPA assignment, or is obtained from agency personnel files and records.

OMP/CENTRAL-6

SYSTEM NAME:

Administrative Law Judge Application Records.

SYSTEM LOCATION:

Assistant Director Office of Administrative Law Judges, Career Entry and Employee Development, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Persons who have applied for Administrative Law Judge positions in the Federal service or who are employees or former employees in Administrative Law Judge positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information on the education and training, employment history and earnings, appraisals of past performance, convictions for offenses against the law, results of written tests, appraisals of potential, rating and ranking determination and appeals of such determinations, honors, awards, or

fellowships, and other background and biographical data on persons who are or were applicants for Administrative Law Judge positions in the Federal service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for Maintenance of the System includes the following with any revisions or amendments:

5 U.S.C. 1305, 3105, and 3344.

PURPOSES:

These records serve as a basis for rating and ranking applicants for Administrative Law Judge positions in the Federal service, documenting the rating and ranking assigned, processing an appeal of a rating or ranking determination, and referring the ranked candidates to Federal agencies for employment consideration. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants to Federal agencies for employment consideration for Administrative Law Judge positions.

b. To refer current and former Administrative Law Judges to Federal agencies for consideration for detail, transfer, reassignment, reinstatement, or reemployment, as applicable.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source (e.g., references, employers, educational institutions or applicant/appellant review panel members) from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a

security or suitability investigation of an individual, the classifying of jobs, the letting of contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

g. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

h. By the National Archives and Records Administration in records management inspections.

i. By the Office in the production of summary description statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in

connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer disks, cards, lists, forms, and in file folders.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual to whom they pertain.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for 7 years. Expired records are shredded or burned.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Administrative Law Judges, Career Entry and Employee Development, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified.

- a. Full name and date of birth.
- b. Social security number.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act requirements at 5 U.S.C. 552a (c)(3) and (d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act," indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to other non-exempt records about them should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified.

- a. Full name and date of birth.
- b. Social security number.
- c. Date of application for examination.

An individual requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act requirements regarding amendment of records at 5 U.S.C. 552a(d). The section of this notice titled "Systems Exempted from Certain Provisions of the Act," indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of other non-exempt records should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified.

- a. Full name and date of birth.
- b. Social security number.
- c. Date of application for examination.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information he or she supplied, except for information on vouchers or otherwise provided that is:

- a. Supplied by references, employers, or educational institutions listed by the applicant; or
- b. Supplied by references, employers, or educational institutions listed by the applicant or appellant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempt to the extent that the release of the material to the individual whom the information is about would:

- a. Reveal the identity of a source who furnished information to the government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or
- b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

For material in this system meeting these criteria, the Office has claimed the (l)(5) exemption from the following provisions of the Act:

- a. 5 U.S.C. 552a(c)(3)—This provision concerns providing an accounting of

disclosures to the individual whom the records are about;

- b. 5 U.S.C. 552a(d)—This provision regards access to and amendment of records.

This system contains testing and examining materials used solely to determine individual qualifications for appointment in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examining material and information, when the disclosure of the material comprise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

OPM/CENTRAL-7**SYSTEM NAME:**

Litigation and Claims Records.

SECURITY CLASSIFICATION:

No security classifications assigned to the system as a whole; however, items of record within the system may bear a national defense/foreign policy classification of Confidential or Secret.

SYSTEM LOCATION:

Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Individuals who make claims under the Military Personnel and Civilian Employees Claims Act of 1964.
- b. Individuals who file civil actions, administrative claims or appeals, or other actions against or concerning the Office, its officials, and employees.
- c. Individuals who are parties to actions in which the Government is involved, but in which the Office's role is advisory to another agency.
- d. Individuals who filed claims with the Office under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the following kinds of records: Administrative appeals; investigative reports; retirement records; official personnel records; documentation of litigation including complaints, answers, motions, briefs, orders, and decisions; claims and supporting documentation submitted under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act, together with correspondence and records of settlement; and final administrative determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

- 5 U.S.C. 301; 5 U.S.C. 1103; 5 U.S.C. 1301-1308; 28 U.S.C. 522; 28 U.S.C. 2872; 31 U.S.C. 241; and Executive Order 10577.

PURPOSE OF THE SYSTEM:

These records are maintained to defend the Office against lawsuits and to settle administrative claims brought against the Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information:

- a. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To any source where necessary to obtain information relevant to an Office decision or action involved in one of the purposes for maintenance of the system.

- c. To a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

- e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

f. To the National Archives and Records Administration for records management inspections.

- g. By the Office of Personnel Management in the production of summary descriptive statistical and analytical studies in support of the function for which the records are collected and maintained, or for related

work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To the insurance carrier of an employee, or a claimant against the Office under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act in order to determine the proper assignment of any liability.

i. In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

l. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained, by case name, by civil action number, or other case number.

SAFEGUARDS:

Records are available only to personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for 7 years. Expired records are shredded or burned after final disposition, including any appeal, of the litigation claim.

SYSTEM MANAGER AND ADDRESS:

Office of the General Counsel, Office of Personnel, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains a record about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Description of type of record.
- d. Court action number if applicable.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from access.

Individuals who wish to obtain access to their records must contact the system manager. Individuals must furnish the following information for their records to be located and identified:

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identify and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, indicate the kinds of materials and the reasons for exempting them from amendment.

Review of requests from individuals seeking amendment of their records which have previously been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body, ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the system manager. Individual must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Description of type of record.

- d. Court action if applicable.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.
- b. Agency officials and records.
- c. Records of administrative and court proceedings including statements of witnesses and documents.
- d. Law enforcement agencies.
- e. Witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

When litigation occurs, information from other systems of records may be incorporated into the case file. In certain instances, the incorporated information may be material which the Privacy Act, at 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6) permits an agency to exempt from certain provisions of the Act. To the extent that such expert material is incorporated into litigation files, the appropriate exemption (k)(1), (2), (3), (5), and (6) has also been claimed for the material as it appears in this system.

The Office of the General Counsel, pursuant to 5 U.S.C. 552a(d)(5), reserves the right to refuse access to information complied in reasonable anticipation of civil action or proceeding.

Collection of information from other Office files may be necessary during litigation. Therefore, it is possible that this system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of an investigation which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about, would:

1. Impair the effectiveness of the investigative process;

2. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975)

that the identity of the source would be held in confidence; or

3. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. The Privacy Act, at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civil service employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about:

1. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

2. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these exemptions from the requirements of 5 U.S.C. 552a (c) (3) and (d). These requirements relate to providing an accounting of disclosures to the individual whom the records are about and amendment of records.

OPM/CENTRAL-8

SYSTEM NAME:

Privacy Act/Freedom of Information Act (PA/FOIA) Case Records.

SYSTEM LOCATION:

a. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

b. Regional and area offices of the Office of Personnel Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with the Office:

a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), include requests for review of initial denials of such requests.

b. Requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves, including:

1. Requests for notification of the existence of records about them.

2. Requests for access to these records.

3. Requests for amendment of these records.

4. Requests for review of initial denials of such requests for notification, access, and amendment.

5. Requests for an accounting of disclosure of records about them.

Note: Since these PA/FOIA case records contain inquiries and requests regarding any of the Office's other systems of records subject to the Privacy Act, information about individuals from any of these other systems may become part of this PA/FOIA Case Records System.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by individuals to the Office for:

a. Information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests.

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under the Office's Privacy Act regulations including requests for:

(1) Notification of the existence of records about them.

(2) Access to records about them.

(3) Amendment of records about them.

(4) Review of initial denials of such requests for notification, access, or amendment.

(5) Requests for an accounting of disclosure of records about them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority of Maintenance of the system includes the following with any revision or amendments:

The Privacy Act of 1974 (5 U.S.C. 552), the Freedom of Information Act, as amended (5 U.S.C. 552), and 5 U.S.C. 301.

PURPOSE:

These records are maintained to process an individual's request made under the provisions of the Freedom of Information and Privacy Acts. The

records are also used by Office to prepare its annual reports to OMB and Congress required by the Privacy and Freedom of Information Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. By the National Archives and Records Administration in records management inspections.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to an agency, subject to law, rule, or regulation enforced by the Office having been found in violation of such law, rule, or regulation, in order to achieve compliance with Office instructions.

g. To disclose information to Federal agencies (e.g., Department of Justice) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence, for use by the Office in making required determinations under the Freedom of Information Act or the Privacy Act of 1974.

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), where necessary

to obtain information relevant to an Office decision concerning a Privacy or Freedom of Information Act request.

i. To disclose to the Federal agency involved, an Office decision on an appeal from an initial denial of a request involving Office-controlled records.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to officials of the Merit System Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules, and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination complaints in the Federal sector, examination to Federal Affirmative Employment Programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained as a paper copy of correspondence in file folders, binders, and on index cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and year of the request.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured room, with access limited to personnel whose duties require access.

SYSTEM MANAGERS AND ADDRESSES:

These records will be disposed of 5 years after the date of final Office action on the case. Records are destroyed by shredding, burning, or the equivalent.

SYSTEM MANAGERS AND ADDRESSES:

The appropriate Associate or Assistant Director, the General Counsel, or Regional Directors, Office of Personnel Management, is system manager for Privacy Act/Freedom of Information Act Case records maintained in that office. Associate and Assistant Director's offices and the Office of the General Counsel are located at: Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act requests were sent, or from where they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate dates of Privacy Act correspondence between OPM and the individual.

RECORD ACCESS PROCEDURE:

Material from other Office systems of records which are exempt from certain Privacy Act requirements may be included in this system as part of a PA/FOIA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, explains the exemptions for this system.

Individuals wishing to request access to their records should contact the system manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act request was sent or from which they received responses to such requests, individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.

c. Approximate dates of Privacy Act/FOIA Act correspondence between OPM and the individual.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Material from other Office systems of records which are exempt from certain Privacy Act requirements may be included in this system as part of a PA/FOIA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, explains the exemptions for this system. Individuals wishing to request amendment to their records should contact the system manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act requests were sent or from which they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate dates of Privacy Act/FOIA Act correspondence between OPM and the individual.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

Note: The amendment provisions of this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request which created the record in this system. That is, after an individual has requested amendment of specific record in an Office system under provisions of the Privacy Act, the specific record may itself become part of this system of Privacy Act/FOIA Act Case Records. An individual may not subsequently request amendment of that specific record again, simply because a copy of the record has become part of this second system of privacy Act/FOIA Act Case Records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Office of Personnel Management has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6). During the course of a PA/FOIA action, exempt materials from those other systems may become part of the case records in this system. To the extent that copies of exempt records, from those other systems are entered into

these PA/FOIA case records, the office has claimed the same exemptions for the records as they have in the original primary systems of records which they are a part.

OPM/CENTRAL-9

SYSTEM NAME:

Personnel Investigations Records.

SECURITY CLASSIFICATION:

None for the system. However, items or records within the system may have national security/foreign policy classifications up through record secret.

SYSTEM LOCATION:

a. Privacy system: Assistant Director for Federal Investigations, Investigations Group, Office of Personnel Management, Washington, D.C. 20415, and the Federal Records Center, Suitland, Maryland.

b. Decentralized segments: Copies of these records may exist temporarily in agencies on current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determination on the individual. ("Agency" as used throughout this system is deemed to include Legislative and Judicial branch establishments as well as those in the Executive Branch).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the Federal service, including agency offices or establishment in the executive, legislative, and judicial branches, and in the Government of the District of Columbia or annuitant survivors.

b. American citizens who are current or former employees or applicants for employment with International Organizations.

c. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

d. Individuals considered for assignments as representatives of the Federal Government in volunteer programs.

e. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a cooperative assignment or under a similar agreement.

f. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in matters related to the administration of the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with the subject of the investigation and with the present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position and correspondence relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; and other information developed from the above.

Note: This system does not include those agency records of a personnel investigative nature that do not come to the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for Maintenance of the System include the following with any revisions or amendments:

- a. Section 2, Civil Service Act of 1883—original authority.
- b. Title 5, U.S.C., sections 1303, 1304, 3301, and 7701.
- c. Title 5, CFR, Part 5.
- d. Title 22, U.S.C., sections 1434, 2519, and 2585.

- e. Title 32, U.S.C., section 686.
- f. Title 42, U.S.C., sections 1874(c), 2165, and 2455.

- g. Pub. L. 82-298, and 92-261.

- h. Executive Orders 9397, 10422, as amended; 10450, sections 7, 8(b), 8(c), and 14.

- i. OMB Circular No. A-130.

j. In addition to the authorities cited above, there are various acts of Congress that contain implied authority for the Office to investigate, such as laws prohibiting the purchase and sale of office, holding of two offices, conspiracy and other prohibitory statutes.

PURPOSES:

a. To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualifications, loyalty to the United States, and evaluations of qualifications for performance of contractual services for the U.S. Government.

b. To document such determinations.

c. To provide information necessary for the scheduling and conduct of the required investigations.

d. To otherwise comply with mandates and Executive orders.

e. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE FOR SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or a security clearance or access determination.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

d. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

e. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

f. To the appropriate Federal, State, or local agency responsible for

investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

j. To another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

k. To the National Archives and Records Administration for records management inspections.

l. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislative as set forth in OMB Circular No. A-19.

m. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

o. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment program, or other functions vested in the Commission.

p. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, in a computerized electronic database, and on microfilm.

RETRIEVABILITY:

Records are maintained in file folders, in a computerized electronic database, and on a microfilm.

SAFEGUARDS:

Folders and microfilm are maintained and secured with manipulation proof combination locks and intrusion alarm systems; or in metal file cabinets secured by three position combination lock. The index to the system and those records which are maintained on the computer database are in a limited access room with a keyless cipher lock. All employees are required to have an appropriate security clearance before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. The computerized data base which shows the scheduling or completion of an investigation and investigative files, if any, is retained for 15 years, plus the current year from the date of the most recent investigative activity, except for investigations involving potentially actionable issue(s) which will be maintained for 25 years plus the current year from the date of the most recent investigative activity. Other index cards which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for two years plus the current year.

b. Hard copy records are destroyed by burning and computerized records are destroyed by electronic erasure.

SYSTEM MANAGER AND ADDRESS:

a. Assistant Director for Federal Investigations, Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system contains information about them should contact the Federal Investigations Processing Center, FOI/P, Boyers, PA, 16018 in writing.

Individuals must furnish the following for their records to be located and identified:

- a. Full name.
- b. Date and place of birth.
- c. Social security number.
- d. Signature.
- e. Any available information regarding the type of record involved.
- f. The category of covered individuals under which the requester believes he or she fits.
- g. The address to which the record information should be sent.

RECORD ACCESS PROCEDURES:

a. Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d), regarding access to records. The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the Federal Investigations Processing in writing. Requests should be directed only to the Federal Investigations Processing Center whether the record sought is in the primary system or in an agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date and place of birth.
- c. Social security number.
- d. Signature.
- e. Any available information regarding the type of record involved.
- f. The category of covered individuals under which the requester believes he or she fits.

g. The address to which the record information should be sent.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

- a. Specific materials in this system have been exempted from Privacy Act

provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individual wishing to request amendment to their non-exempt records should contact the Federal Investigations Center in writing. Requests should be directed only to the Federal Investigations Processing Center, whether the record sought is in the primary system or in agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

- a. Full Name.
- b. Date and place of birth.
- c. Social security number.
- d. Signature.
- e. Any information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

Note: Where an agency retains the decentralized copy of the investigative report provided by OPM, requests for access to or amendment of such reports, will be forwarded to the Federal Investigations Processing Center for processing.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories of sources:

- a. Applications and other personnel and security forms and personal interview furnished by the individual.
- b. Investigative and other record material furnished by Federal agencies.
- c. Notices of personnel actions furnished by Federal agencies.
- d. By personal investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureau, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

- a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy

Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit system. The Privacy Act, at U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U.S. Code. The Privacy Act at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment and Federal contact or access to classified information. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

(1) Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

(2) Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these exemptions from the requirements of 5 U.S.C. 552(c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual who the records are about and access to and amendment of records.

OPM/CENTRAL-10

SYSTEM NAME:

Directory of Federal Executive Institute Alumni.

SYSTEM LOCATION:

Federal Executive Institute, Office of Personnel Management, 1301 Emmett Street, Charlottesville, Virginia 22901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Federal, State, and local government employees (both current and former), international executives, former faculty and staff, and Fellowship students who have attended long term programs at the Federal Executive Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the name, position title, office address and telephone number, agency FEI program attended, and, with the approval of the individual, home address and telephone number, of alumni of FEI programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

5 U.S.C. Sections 301 and 4117.

PURPOSE:

The Directory is used by FEI alumni to maintain contact with other alumni and to provide them with information to continue their educational experiences. Copies of the Directory are made available to FEI alumni to allow them to maintain relationships developed at the Institute in order to continue educational experiences and to promote intergovernmental cooperation. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Federal agencies to assist them in planning for executive development programs.

b. To provide information to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

c. To provide information to the Federal Executive Institute (FEI) Alumni Association for the purpose of mailing association materials to an alumni's home or business address.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

In addition to its appearance in the Directory, information will be maintained on FEI mailing lists, or forms used to collect the data, and on automated media.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained. Records may also be retrieved by agency, location, and FEI program.

SAFEGUARDS:

Records kept by FEI officials are maintained in a secured area with access limited to those authorized personnel at FEI whose duties require access. Because home addresses and telephone numbers are included in the Directory, distribution of the Directory is limited to FEI alumni, and the listed routing users. Those users are notified by a notice placed in the Directory not to make it available for commercial purposes. In addition:

- a. At the request of the individual, his or her home address and telephone number will not be included in the Directory;
- b. At the request of the employing agency, information relating to the individual's status (i.e., position title) will be excluded from the Directory.

RETENTION AND DISPOSAL:

Obsolete information will be deleted from automated records.

SYSTEM MANAGER AND ADDRESS:

Register, Federal Executive Institute, Office of Personnel Management, 1301 Emmett Street, Charlottesville, Virginia 22901.

NOTIFICATION PROCEDURE:

All individuals included in the system receive a copy of the Directory. Individuals requiring additional information about their inclusion in the system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Agency.
- c. FEI program attended and dates.

RECORD ACCESS PROCEDURE:

All record information in the system is included in the Directory. Individuals wishing to request to access to other forms in the system which contains the same information should contact the system manager. Individuals must furnish the following information for

their records to be located and identified:

- a. Name.
 - b. Agency.
 - c. FEI program attended and dates.
- Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
 - b. Agency.
 - c. FEI program attended and dates.
- Individuals requesting amendment must follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

All information in the system comes from the individuals to whom the records pertain.

OPM/CENTRAL-11**SYSTEM NAME:**

Presidential Management Intern Program Records.

SYSTEM LOCATION:

Assistant Director, Career Entry and Employee Development, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former interns and students pursuing graduate degrees in public management who have been nominated by their universities for consideration under the Presidential Management Intern (PMI) Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, social security number, date of birth, race/national origin academic background, home address, home telephone number, employment history, veteran preference, and other personal history information needed during the evaluation and selection process. This system will also contain evaluation statements from the nominating universities and confidential information developed during the regional screening process and final panel evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Executive Order 12364.

PURPOSE:

These records are used by program personnel for the following reasons:

- a. To determine basic program eligibility and to evaluate the nominees in a regional screening process conducted by OPM regional officials with the participation of agency managers, and State and local government representatives.

- b. To group the nominees into various categories (finalists, alternatives, and non-selectees) and make a final determination as to those candidates who will be referred to the agencies for employment consideration.

- c. For program evaluation functions to determine the effectiveness of the program and to improve program operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

- a. To refer candidates to Federal agencies for employment consideration.
- b. To refer candidates to State and local governments, congressional offices, international organizations, and other public offices with permission of the candidates, for the purpose of employment consideration.

- c. To refer interns for consideration for reassignment and promotion within the employing agencies.

- d. As a data source for management information of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

- e. To refer pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

- f. To request information from a Federal, State, or local agency maintaining civil, criminal, or other information relevant to an agency decision concerning the hiring or retention of a candidate.

- g. To provide an educational institution with information on an

appointment of a recent graduate to a Federal position at a certain grade level.

h. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to another Federal agency, to a Court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

j. To disclose, in response to a request for discovery for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on forms, lists, punched cards, disks, magnetic tape, and floppy disks.

RETRIEVABILITY:

Records are indexed by name of nominee, schools, State of legal residence, social security number, and any combination of the above.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets and in a computerized system accessible to only

those program managers whose official duties necessitate such access. Confidential passwords are required for access to these automated records.

RETENTION AND DISPOSAL:

Automated records are retained for up to five years. Manual records are retained for up to three years. Tapes are erased and manual records are burned or shredded.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Career Entry and Employee Development Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Inquiries, including name, address, and nominating university should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from access. Current or former Presidential Management Interns or nominees who wish to gain access to their non-exempt records should direct such a request in writing to the system manager. Individuals must furnish the following information for their records to be located and identified.

- a. Full name.
- b. Address.
- c. Academic year of nomination.
- d. Nominating University.

Individuals must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific material in this system has been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from amendment. Current or former Presidential Management Interns or nominees wishing to request amendment of their non-exempt records should contact the system manager. Individuals must furnish the following information for their records to be located and identified.

- a. Full name.
- b. Address.
- c. Academic year of nomination.
- d. Nominating University.

Individuals must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records originates from the individual to whom it applies, nominating university deans, Federal, State, and local officials involved in the screening and selection process, and employing agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records, for any such testing or examination materials in the system.

OPM/CENTRAL-12

SYSTEM NAME:

Survey Information Records.

Subsystem A: Assessment of the Impact of the Civil Service Reform Act.

Subsystem B: Federal Employees Attitude Survey.

Subsystem C: Comparative Assessment of Upward Mobility Programs.

Subsystem D: Evaluation of Federal Employee Counseling Services.

SYSTEM LOCATION:

Records in this system may be located at any of the Office of Personnel Management's central or regional offices or with private sector contractors participating in the conduct of the survey.

Subsystem A: Records are retained by the contractor, i.e., University of California at Irvine, University of Michigan, and Case Western Reserve University.

Subsystem B: Records are retained by the contractor, Westinghouse Learning Corporation Division, Iowa City, Iowa.

Subsystem C: Records are retained by the contractor, the Granville Corporation, Washington, DC.

Subsystem D: Records are retained by the contractor, Macro Systems, Inc., Silver Spring, Maryland.

Categories of Individuals Covered by the System:

Subsystem A: Current and former Federal employees and members of the public who are recipients of Federal services or products.

Subsystem B: Current Federal employees.

Subsystem C: Current and former Federal employees.

Subsystem D: Current and past clients of Employee Counseling Service Programs, current employees, supervisors, management officials and employee counseling services program administrators/coordinators at selected agencies and installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system, both manual and automated, includes:

a. Demographic data, e.g., including, but not limited to names, home or business address, age, sex, employment and educational history data, description of present assignment and duties (current Federal employee), and description of the nature of association with a Federal agency (non-Federal recipients of Federal services and products).

b. Responses to questionnaires that call for specific details regarding the implementation of agency programs and their impact on the respondent's duties, work environment, performance, or other work related issues (current Federal employees) or on the actual manner and method by which services or products are provided as well as any improvement or deterioration in these areas (recipients of services/products).

c. Responses that call for opinions or judgements on the part of respondents concerning their perception on how programs and new procedures have affected agency performance, employee morale, mission accomplishment, and service to the public.

d. Self-identification as to race, sex, ethnicity, or handicap where appropriate.

Although it is not possible to foresee all information to be collected, these data elements would constitute what is sought for the majority of surveys conducted. Where the survey seeks significant additional data, the Federal Register notice for the survey will identify the specific information to be maintained beyond that identified here.

Subsystem A: This subsystem will contain no additional records beyond those listed in the Categories of Records section for Federal employees.

Subsystem B: This subsystem will contain no additional records beyond those listed in the Categories of Records section for Federal employees.

Subsystem C: This subsystem will contain no additional records beyond those listed in the Categories of Records section for Federal employees.

Subsystem D: In addition to the records listed in the Categories of Records section, this subsystem will contain records identifying participants of specific counseling programs, medical and quasi-medical records relating to participants, and records relating to medical situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

This Office of Personnel Management is authorized to regulate (and thus to survey the impact of those regulations) various aspects of the personnel management practices and policies of Federal agencies under various sections of title 5 of the United States Code, including sections 1104, 1302, 3136, 3502, 3595, 4118, 4315, 4702, 4706, 5115, 5338, 5405, 6311, 7504, 7514, 8347, 8716, and 8913 or other statutes or Executive orders. Additionally, sections 7105, 7118, and 7132 provide for an Office rule in the functions described therein.

Subsystem A: One or more of the authorities cited above.

Subsystem B: 5 U.S.C. 4702.

Subsystem C: 5 U.S.C. 4702.

Subsystem D: 5 U.S.C. 4702, 42 U.S.C. 4561 et seq. and 21 U.S.C. 1180 et seq.

PURPOSE:

Information in this system will be used to develop statistical reports on agency personnel management practices and policies. Information will also be used to determine the impact of Office regulations in those areas, as well as the impact of changes in the Federal civil service mandated by statute or executive order. Maintenance of a system of records as defined by the Privacy Act is necessary so that longitudinal surveys of Federal employees and non-Federal recipients of Federal services/products can be made.

Subsystem A: The purpose of this subsystem is to assess the impact of the Civil Service Reform Act on personnel management.

Subsystem B: The purpose of this subsystem is to assess the attitudes of supervisors/managers and senior level executives toward the recent reforms in the civil service system.

Subsystem C: The purpose of this subsystem is to determine and compare

the effectiveness of Upward Mobility Programs and to ascertain the perceptions of the value of these programs by participants and their supervisors/managers.

Subsystem D: The purpose of this subsystem is to provide evaluative research which will assist Federal managers in making practical decisions regarding program planning and implementation of Federal employee counseling service programs.

The objectives of the research are as follows:

(1) To evaluate organizational cost-effectiveness and loss or gain in productivity as a result of selected Federal employee counseling services programs.

(2) To identify effects of those programs upon employees, supervisors, and managers.

(3) To define, identify, and analyze characteristics of successful programs.

(4) To identify inhibitors to effective program implementation and operation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

By the Office of Personnel Management or the contractor in the production of summary descriptive statistics analytical studies in support of the functions for which the records are collected and maintained, or related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

Subsystem A: None, other than as shown above.

Subsystem B: None, other than as shown above.

Subsystem C: None, other than as shown above.

Subsystem D: None, other than as shown above.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

For all subsystems, records will be stored as a manual, automated, or hybrid system.

Manual records are maintained in file folders, on questionnaires, lists, and forms. Automated records are in computer processed storage media.

Subsystem A: A hybrid system.

Subsystem B: A hybrid system.

Subsystem C: A hybrid system.

RETRIEVABILITY:

For all subsystems, records are retrieved by the name of the individual and one or more of the following:

- (1) Date of birth.
- (2) Social security number.
- (3) Identification of type of survey in which they participated.
- (4) Any unique identifier assigned at the time of their participation.

SAFEGUARDS:

For all subsystems, records are to be stored in locked file cabinets or secured rooms. Access to manual or automated records is limited to specially designated OPM and contractor personnel.

Subsystem A: These survey records are available for review only by contractor personnel.

Subsystem B: These survey records are available for review only by contractor personnel.

Subsystem C: These survey records are available for review only by contractor personnel.

Subsystem D: These survey records are available for review only by OPM and contractor personnel.

RETENTION AND DISPOSAL:

In each subsystem, individually identifiable information may be destroyed in a relatively short period of time, e.g., as soon as practicable after aggregate statistics are compiled or after any follow-up request for an individual's voluntary participation in the survey.

Computerized records and statistical reports based on the data collected with all identifiers removed may be retained indefinitely. Other records are retained up to one year after completion of the survey.

Manual records are burned or shredded while automated records are erased.

Subsystem B: The records in this subsystem will be destroyed at the completion of each survey.

Subsystem C: The records in this subsystem will be destroyed by the contractor at the completion of the survey.

Subsystem D: Identifiable data will be retained until 6 months after completion of the project.

Note: Where the Office, in conducting a survey, contracts with non-Federal parties, the contracts shall stipulate agreement to the above procedures on the part of the contractor.

SYSTEM MANAGER AND ADDRESS:

For all subsystems, the system manager is (unless changed in the notice for the subsystem) Chief, Policy and Information Division, Personnel Systems

and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

Subsystem A: As shown above.
Subsystem B: As shown above.
Subsystem C: As shown above.
Subsystem D: Program manager, Employee Health Services Branch, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

For all subsystems, individuals wishing to inquire whether this system of records contains information about them should contact:

- a. The OPM office conducting the survey, if known, or the system manager.
- b. When the survey is being conducted by a non-Federal contractor, the specific contractor involved.
- c. The office specified in the **Federal Register** notice announcing the subsystem if different from "a" or "b" of this section.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Nature of participation (Federal employee or non-Federal employee).
- c. Agency where employed (if appropriate) when the survey was conducted.
- d. Any additional identifiers as shown in the **Federal Register** announcement of the subsystem.

RECORDS ACCESS PROCEDURES:

Unless otherwise specified in the **Federal Register** notice for the subsystem, individuals wishing to request access to their records should contact the OPM sponsoring office, the system manager, or the contractor as appropriate. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Nature of participation (Federal employee or non-Federal employee).
- c. Agency where employed (if appropriate) when the survey was conducted.
- d. Approximate date and nature of the survey.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identify and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Unless otherwise specified in the **Federal Register** notice for the

subsystem, any individuals wishing to request amendment of their records should contact the OPM sponsoring office conducting the survey, the system manager, or the contractor as appropriate. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Nature of participation (Federal employee or non-Federal employee).
- c. Agency where employed (if appropriate) when the survey was conducted.
- d. Approximate date and nature of the survey.

Individuals requesting amendment must comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Unless specified in the **Federal Register** notice for the subsystem, all subsystems obtain information from individual participants of the survey, from Office or agency personnel records, and from labor organizations.

OPM/CENTRAL-13**SYSTEM NAME:**

Executive Personnel Records.

SYSTEM LOCATION:

Director, Office of Executive Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former appointees in the Senior Executive Service; current and former incumbent of executive level, General Schedule 16-18, and Scientific and Professional positions in research and development; and participants in and graduates of OPM-approved agency Senior Executive candidate development programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include:

a. Demographic, appointment, and assignment information (e.g., name, home address, date of birth, Social Security Number, race and ethnic designation, title of position, pay rate, and type of appointment).

b. Background data on work experience, educational experience, publications or awards (includes performance ratings and any performance, rank, or incentive awards received), and career interests.

c. Determinations on nominees for Meritorious and Distinguished Executive ranks.

d. Determinations concerning executive (managerial) qualifications (i.e., Qualification Review Board records).

e. Information on performance of SES members (e.g., performance ratings, performance awards, and incentive awards).

f. Information relating to participants (current and former) in the sabbatical leave program (e.g., dates of participation and reasons for the leave).

g. Applications from individuals who, within the 90-day period provided for under 5 U.S.C. 3593(b), seek reemployment in the Senior Executive Service.

h. Information concerning the reason(s) why an individual leaves the SES (e.g., to enter private industry, to work for a State government, or removed during probation or after, because of performance).

i. Information about the recruitment of individuals for SES positions (e.g., recruited from another Federal agency or from outside the Federal service).

Note: Automated and manual duplicates of records in this system, maintained by agencies for purposes of actual administration of the SES, along with other records agencies have on Federal executives are not considered part of this system. Such records are considered general personnel records and are covered by the OPM/GOVT-1, General Personnel Records system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Title 5, U.S. Code, Section 2101a; 3131 through 3136; 3391 through 3397; 3591 through 3595; 4311 through 4315; 5407; 5381 through 5385; 5752; and 7541 through 7543.

PURPOSE:

The records are used to: (1) Assist the Office in carrying out its responsibilities under title 5, U.S. Code, and Office rules and regulations promulgated thereunder, including the establishment of SES positions by agencies, development of qualification standards for SES positions, establishment and operation of one or more qualifications reviews boards, establishment of programs to develop candidates for and incumbents of the SES, and development of performance appraisal systems; (2) pursuant to section 415 of the Civil Service Reform Act, assist the Office in meeting its mandate to evaluate the effectiveness of the SES and manner in which the Service is administered; (3)

provide data used in policy formulation, program planning research studies, and required reports regarding the Government-wide SES program; and (4) locate specific groups of individuals for personnel research (while protecting their individual privacy).

Race and ethnic data and performance ratings are collected for statistical use only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To identify and refer qualified current or former Federal employees to Federal agencies for vacancies in the SES.

b. To refer qualified current or former Federal employees or retirees to State and local governments and international organizations for employment considerations.

c. To provide an employing agency with extracts from the records of that agency's employees in the system.

d. To provide information required in the annual report to Congress mandated by 5 U.S.C. 3135 and elsewhere, regarding positions in the SES and the incumbents of these positions.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

f. By the Office of Personnel Management to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

h. To the National Archives and Records Administration for records management inspections.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being

conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

o. To provide information to the White House on executives with non-career appointments in the Senior Executive Service under 5 U.S.C. 3133(a)(7); in positions in the General Schedule filled by non-career executive assignments under 5 CFR Part 305, Subpart F; in excepted positions paid at Executive Schedule pay rates under 5 U.S.C. 5311; and in other positions at General

Schedule grades 16 to 18, or equivalent, filled by presidential appointment with the advice and consent of the Senate, or excepted from the competitive service because they are of a confidential or policy-determining character under 5 CFR 213.3301. The information serves as a data base for the purpose of statistical analysis and longitudinal studies.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic disk and tape, punched cards, and microfiche.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the individual to whom they pertain.

SAFEGUARDS:

Manual records are maintained in lockable metal filing cabinets or in secured rooms with access limited to those whose official duties require access. Access to computerized records is limited to those whose official duties require access. Access to race and ethnic data is restricted to specially designated Office personnel.

RETENTION AND DISPOSAL:

Records are retained so long as the individual remains in a covered position and for 5 years after they leave Federal service.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Executive Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system or records contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Social security number.
- c. Address where employed.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Social security number.
- c. Address where employed.

An individual requesting access must also follow the Office's Privacy Act

regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Social security number.
- c. Address where employed.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual named in the record, his or her employing agency, and is also obtained from official documents of the Office.

OPM/GOV'T-1

SYSTEM NAME

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Office and with Personnel Officers or other designated offices of the local installation of the department or agency that currently employs the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPF) are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service.

The use of the phrase "long-term" to describe those records filed on the right-hand-side of OPFs is used throughout this notice because these records are not actually permanently retained. The term "temporary" is used when referencing short-term records filed on the left-hand-side of OPFs and all other records not filed in the OPF, but covered by this notice.

Note: The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided

to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records with this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees are defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in Federal Personnel Manual Supplement 293-31. Records in this system are—

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reduction-in-force, resignations, separations, suspensions, Office approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employee Health Benefit Program, as well as forms showing designation of beneficiary.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note: Some of these records may also become part of the OPM/CENTRAL-5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note: Some of these records may also become part of the OPM/CENTRAL-3, Federal Executive Development Records; or OPM/CENTRAL-13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of

advancement (e.g., an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292-1.

h. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note: Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT-1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency automated personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance appraisal and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT-2 system) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note: It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system.

k. Records relating to designations for lump sum death benefits.

l. Records relating to classified information non-disclosure agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive Orders 9397, 9830, and 12107.

PURPOSES:

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may pertain to a formal action but do not constitute a record of it nor make a substantial contribution to the employee's long-term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used—

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service and to provide college and university officials with information about their students working under Cooperative Education, Volunteer Service, or other similar programs

necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency cited above, or to any agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TBS election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Programs, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel

policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

m. To disclose to any agency in executive, legislative, or judicial branch, or the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

p. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

its a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections.

s. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

- (1) Fitness-for-duty examination procedures; or
- (2) Agency-filed disability retirement procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal work force.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Veterans Administration, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206 or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, and

in connection with matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

- (1) Tenure of employee;
- (2) Civil service status;
- (3) Length of service in the agency and the Government; and
- (4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (e.g., to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval, or to obtain accreditation or other approval rating). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose information to the Federal Acquisition Institute (FAI) about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the FAI shall only use the data for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the *Federal Register* of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are

contained in the Central Personnel Data File to authorized Federal agencies and non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include the name, social security number, date of birth, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, state, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, in order to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with General Services Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

a. *Long-term records.* The OPF is retained by the employing agency as long as the individual is employed with the agency. Medical records are kept separately from the OPF while the individual is employed by the agency. When the individual transfers to another Federal agency or to another appointing office, the OPF, and the Employee Medical Folder covered by the OPM/GOVT-10 system of records, are sent to that agency or office. Other medical records covered by this system; i.e., fitness-for-duty examinations, are considered temporary in nature. Such records, when not submitted to the Office for retention in a disability retirement file (or submitted, but the Office does not approve retirement), shall be destroyed no later than 6 months after closing action on the case or sooner at the discretion of the agency.

For non-SES employees, transfer performance ratings of record 3 years old or less and the performance plan on which the most recent rating was based from the Employee Performance File to

the OPF, if the ratings and plans are not maintained by the agency in the OPF.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule-1 (GRS-1).

b. *Other records.* Other records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processible media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS-1, such records should not be used in making decisions concerning employees.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees should contact the Office's St. Louis office (address cited in "Records Access Procedure" below), or as explained in the Note in the "Records Access Procedure" below, the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Date of birth.
- c. Social security number.
- d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).
- e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Date of birth.
- c. Social security number.
- d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).
- e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

Note: An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history compiled from documents in the OPF. The transcript includes the individual's name; date of birth; social security number; all past grades held; position titles; duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to the NPRC for access to copies of all records maintained in his or her OPF. Though NPRC stores and services the OPFs of former Federal employees covered by this system, that record remains the property of the Office, and such requests will be handled and processed by the: OPF/EMF Access Unit, Office of Personnel Management, P. O. Box 18673, St. Louis, Missouri 63118.

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the Office. Individuals must furnish the following information for their records to be located and identified.

- a. Full name(s).
- b. Date of birth.
- c. Social security number.
- d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).
- e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297).

Note: Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to the Office's OPF/EMF Access unit in St. Louis, Missouri. NPRC only stores and services the OPFs of former Federal employees covered

by this system, and the Office's office in St. Louis processes only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by—

- a. The individual on whom the record is maintained.
- b. Physicians examining the individual.
- c. Educational institutions.
- d. Agency officials and other individuals or entities.

e. Other sources of information for long-term records maintained in an employee's OPF, in accordance with Federal Personnel Manual, Chapter 293, and the Federal Personnel Supplement 293-31.

OPM/GOVT-2

SYSTEM NAME:

Employee Performance File System Records.

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within the OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's automated personnel records system.

e. In an agency microformed EPF.

Note 1: Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (e.g., administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance regarding their use within the agency's system.

Note 2: The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided

to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee for access to the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance appraisals issued under employee appraisal systems and any document that indicates that the appraisal is being challenged under administrative procedures (e.g., when the employee files a grievance on the appraisal received).

b. A document (either the summary appraisal form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the appraisal is based.

c. Supporting documentation for employee appraisals, as required by agency appraisal systems or implementing instructions, and which may be filed physically with the appraisal of record (e.g., productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances and maintained, e.g., in a work folder by supervisors/managers at the work site.

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (e.g., nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (letter on or appended to the performance appraisal document) by the employee (e.g., a statement of disagreement with the appraisal or recommendation), in accordance with agency performance appraisal plans and implementing instructions, regarding an appraisal given and any recommendations made based on them.

Note: When a recommendation by a supervisor/manager or a statement made by the employee regarding the appraisal issued (or a copy) becomes part of another Government-wide system or internal agency file (e.g., an SF 52 filed in an OPF when the action is effected or when documents or

statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records needed to support removal for unsatisfactory performance during the supervisory or managerial probationary period, the SES appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations (which are not considered a permanent OPF document), recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory appraisals used in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee problems, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B cards.

Note: To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's automated or microform record system, they are considered covered under this system of records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item k above), those records are to be considered as being covered by this system and not the OPM/GOVT-1 system.

This notice does *not* cover these records (or copies) when they become part of a grievance file or a 5 CFR parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT-3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files

under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system of records, not covered by this or another OPM, MSPB, or EEOC Government-wide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, i.e., information on employees that the agency exercises no control and does not require or specifically describe in its performance appraisal system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion, such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a position that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE:

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to officials of the MSPB, including its Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. 1205, 1206, and 1209 or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the

Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality-step increases, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with hiring or retaining of an employee; issuing a security clearance; conducting a security or suitability investigation of an individual; classifying jobs; letting a contract; issuing a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to a congressional office from the record or an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

j. To disclose information to the Department of Justice, or in a proceeding

before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

k. By the National Archives and Records Administration in records management inspections.

l. By the Office or employing agency to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose pertinent information to the appropriate Federal (including offices of Inspectors General), State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

n. To disclose information to private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that the records are properly constituted in accordance with the Office or agency requirements; are accurate, relevant, timely, and complete; and the disclosure is in the best interest of the Government (e.g., where the agency's cooperation with the private sector entity, through

the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community). Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

o. To disclose information to any member of an agency's Performance Review Board or other board or panel when the member is not an official of the employing agency. The information would then be used for approving or recommending performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

p. To disclose to Federal, State, local, and professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of an individual seeking to be licensed.

q. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in file folders or envelopes, on magnetic tape, disks, or microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access automated records through use of access codes and logs.

RETENTION AND DISPOSAL:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee

leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. Sec. 4314.

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and on other employees for 3 years, except as shown in paragraph b below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual.

b. Appraisal of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, ratings and plans 5 years old or less shall be forwarded to the gaining agency with the individual's OFP.

e. Some performance-related records (e.g., documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after the employee leaves.

Note: When an agency retains an automated or microform version of any of the above documents, retention of such records longer than shown is permitted (except for those records subject to 5 U.S.C. 4303(d)) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and

Oversight Group, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Social Security number.
- c. Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Social Security number.
- c. Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Social Security number.
- c. Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

- a. Supervisors/managers.
- b. Performance Review Boards.
- c. Executive Resource Boards.
- d. Other individuals or agency officials.
- e. Other agency records.
- f. The individual to whom the records pertain.

OPM/GOV'T-3

SYSTEM NAME:

Records of Adverse Actions and Actions Based on Unacceptable Performance.

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with 5 CFR parts 432, 752, or 754 of the Office's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions and actions based on unacceptable performance. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witness, hearing notices, reports, and agency decisions.

Note: This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit System Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 4303, 7504, 7514, and 7543.

PURPOSE:

These records result from the proposal, processing, and documentation of these actions either taken by the Office or agencies against employees in accordance with 5 CFR parts 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the

purpose for which the records were collected.

h. By the National Archives and Records Administration in records management inspections.

i. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to official of the MSPB, including its Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by law.

l. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

o. To disclose information to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that the records are properly constituted in

accordance with Office or employing agency requirements; the records are accurate, relevant, timely, and complete; and the disclosure is in the best interests of the Government. When the agency's cooperation with the private sector entity, through the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets or in automated media to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action or a performance-based removal or demotion action are disposed of 4 years after the closing of the case. Disposal is by shredding, or erasure of tapes (disks).

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken under parts 432, 752 (subparts A through D only), and 754. Director, Office of Executive Administration, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken against SES appointees under subparts E and F, of part 752.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to

the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an adverse or performance-based action file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of

identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

- a. By the individual on whom the record is maintained.
- b. By testimony of witnesses.
- c. By agency officials.
- d. From related correspondence from organizations or persons.

OPM/GOV'T-4 [Reserved]

OPM/GOV'T-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records

SYSTEM LOCATION:

Associate Director for Career Entry and Employee Development, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

- a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.
- b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as—

- a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1: Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

Note 2: The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3: To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and

rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note: With the exception of Routine Use "p," none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of the agency's Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual,

classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics any analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured

in such a way as to make the date individually identifiable by inference.

i. To disclose information to officials of the Merit Systems Protection Board, including its Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federal of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or speciality, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and

safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAGEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Career Entry and Employee Development, Office of Personnel Management, 1900 E. Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.

g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C.(c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.

- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

Note: In responding to an inquiry or a request for access or amendment, resource specialists may contact the Office's area office that provides examination and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which

relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following:

- a. Answer keys.
- b. Assessment center exercises.
- c. Assessment center exercise reports.
- d. Assessor guidance material.
- e. Assessment center observation reports.
- f. Assessment center summary reports.
- g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercise, structured interviews, and their associated evaluation guides and reports.
- h. Item analyses and similar data that contain test keys.
- i. Ratings given for validating examinations.
- j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
- k. Rating sheets.
- l. Test booklets, including the written instructions for their preparation.
- m. Test item files.
- n. Test answer sheets.

OPM/GOV'T-6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Assistant Director, Office of Personnel Research and Development, Career Entry and Employee Development Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415; the Office's regional offices and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and

background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1303, 3301, and 4702.

PURPOSES:

These records are collected, maintained, and used by the Office or other Federal agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies). Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

- a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production

of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board, including its Office of the Special Counsel, in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards disks, and magnetic tape.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry and Employee Development Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the state where they employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

- d. Social security number.
- e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center

assessors; and agency of Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOV'T-1 and OPM/GOV'T-7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

- a. Answer keys.
- b. Assessment center exercises.
- c. Assessment center exercise reports.
- d. Assessor guidance material.
- e. Assessment center observation reports.
- f. Assessment center summary reports.
- g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and reports.
- h. Item analyses and similar data that contain test keys.
- i. Ratings given for validating examinations.
- j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
- k. Ratings sheets.
- l. Test booklets, including the written instructions for their preparation.
- m. Test item files.
- n. Test answer sheets.
- o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.

OPM/GOV'T-7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

SYSTEM LOCATION:

Records in this system may be located in the following offices:

- a. Office of Personnel Research and Development, Career Entry and Employee Development Group, Office of

Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. Office of Affirmative Recruiting and Employment, Career Entry Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

c. The Office's regional offices and any register-holding area offices under the jurisdiction of a regional office.

d. Agency Personnel, Equal Employment Opportunity, or Federal Equal Opportunity Recruitment Program offices or other designated offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including—

a. Applicants for examinations administered either by the Office or by employing agencies.

b. Applicants on registers or in inventories by the Office and subject to its regulations.

c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.

d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).

e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's name; social security number; date of birth; statement of major field of study; type of current or former Federal employment status (e.g., career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note: The race and national origin information in this system is obtained by three alternative methods: (1) Use of the Office's form on which individuals identify themselves as to race and national origin; or (2) by visual observation (race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOV'T-1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 258, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

5 U.S.C. 7201, Sections 4A, 4B, 15A (1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1978); 29 CFR 720.301; and 29 CFR 1613.301.

PURPOSES:

These records are used by OPM and agencies to—

a. Evaluate personnel/organizational measurement and selection methods.

b. Implement and evaluate agency affirmative employment programs.

c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).

d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.

e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)

f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).

g. To locate individuals for personnel research.

Note: These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board, including the Office of its Special Counsel, in response to its request in connection with the processing of appeals, special

studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial proceeding or to comply with the issuance of a subpoena.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determine that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case if has been determined that

the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tapes and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation, they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note: When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry and Employee Development Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20425.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager; the Office's regional offices covering the state where the application for Federal employment was filed; or the personnel, Equal Employment

Opportunity, or Equal Employment Opportunity Recruitment office or other designated office where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Social security number.
- c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

- e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Social security number.
- c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

- e. Signature.

An individual requesting access must also follow OPM's Privacy Act regulations on verification of identity and access of records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Social security number.
- c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

- e. Signature.

An individual requesting amendment must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on such forms as Personnel Research Questionnaire 79-1 (OPM Form 1377),

Background Survey Questionnaire 79-2 (OPM Form 1388), or equivalent forms, or is obtained directly from other agency or OPM records (e.g., race, sex, national origin, and disability status data may be obtained from the OPM/GOVT-1, General Personnel Records system).

OPM/GOVT 8 [RESERVED]

OPM/GOVT-9

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, OPM regional offices, agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with Agency Compliance and Evaluation, Office of Personnel Management; an OPM regional office; or with their agency.
- b. Current and former Federal employees who have filed a retained grade or pay appeal with OPM's Agency Compliance and Evaluation; or an OPM regional office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position or whether an employee is to remain in a retained grade or pay category. This system may also include transcripts of agency hearings and statements from agency employees.

Note: This system notice also covers agency files created when: (a) An employee appeals a position classification or job grading decision to OPM or within the agency regardless of whether that agency appeal decision is further appealed to OPM; and (b) an employee files a retained grade or pay appeal with OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

5 U.S.C. 5112, 5115, 5348, and 5366.

PURPOSE:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

- a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
 - b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.
 - c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
 - d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, or retained grade or pay appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.
 - e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retaining or assigning of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, and classifying positions, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
 - f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.
 - g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:
1. The agency, or any component thereof; or
 2. Any employee of the agency in his or her official capacity; or
 3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
 4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components.
- is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.
- h. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.
 - i. By the National Archives and Records Administration in records management inspections.
 - j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.
 - k. To disclose information to officials of the Merit Systems Protection Board, including its Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.
 - l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to

otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, AND RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or automated media in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, and retained grade or pay appeal files are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropriate.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individual wishing to inquire whether this system of records contains information about them should—

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate OPM regional office.

b. For records pertaining to a position classification appeal or job grading appeal, where the appeal was made only to OPM, contact the system manager or the OPM regional office, as appropriate.

c. For records pertaining to a position classification appeal or job grading appeal filed with both the agency and OPM, contact the agency personnel officer, other designated officer, or the system manager, or the OPM regional office, as appropriate.

Individual must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, or a retained grade or pay appeal, must be provided access to the record. However, after the appeal has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

- a. Individual to whom the record pertains.
- b. Agency and/or OPM records relating to the action.
- c. Statements from employees or testimony of witnesses.
- d. Transcript of hearings.

OPM/GOV'T-10

SYSTEM NAME:

Employee Medical File System Records.

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal Records Storage Centers operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

Note: The records in this system of records are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records.

Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include—

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

Note 1: Records maintained by an agency dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence.

c. Record resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and lists of who has been tested, who failed to report for testing, and related documents.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (e.g., those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (i.e., those retained for the entire duration of Federal service and for some period of time after).

Note 2: Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 3: Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSE:

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health

Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note: With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the Agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

These records and information in these records may be used—

a. To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or a national, State or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof, or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination

and clearance process in connection with the private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to officials of the Merit System Protection Board including its Office of Special Counsel, the Federal Labor Relations Authority and its general counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals of health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the date individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-decision, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in automated record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Some records are retained for the duration of employment with a given agency. Other records are retained for the duration of Federal employment, plus 30 years. Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 2 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. Current Employees. Current employee should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. Former employees. Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to: OPF/EMF Access Unit, Office of Personnel Management, P. O. Box 18673, St. Louis, Missouri 63118.

Requests to the Office's OPF/EMF Access Unit in St. Louis, Missouri must submit the following information for their records to be located and identified:

1. Full name.

2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.

RECORDS ACCESS PROCEDURE:

- a. Current employees should contact the appropriate agency office as indicated in the "Notification Procedure" section furnish such identifying information as required by the agency to locate and identify the records sought.
- b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri for access to their EMF, when submitting a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, the individual must furnish the following information to locate and identify the record sought:
 1. Full name.
 2. Date of birth.
 3. Social security number.
 4. Agency name, date, and location of last Federal service.
 5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should—

- a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.
- b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and

identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.

5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR Part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from—

- a. The individual to whom the records pertain.
- b. Agency employee health unit staff.
- c. Federal and private sector medical practitioners and treatment facilities.
- d. Supervisors/managers and other agency officials.
- e. Other agency records.

[FR Doc. 90-2418 Filed 2-2-90; 8:45 am]

BILLING CODE 6325-01-M



Monday
February 5, 1990

Part VI

**Office of
Management and
Budget**

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET**Budget Rescissions and Deferrals**

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report

two new deferrals and four revised deferrals of budget authority now totalling \$8,251,604,695.

The deferrals affect International Security Assistance programs, as well as programs of the Departments of Agriculture, State, and Transportation.

The details of these deferrals are contained in the attached report.

George Bush.

*The White House,
January 29, 1990.*

BILLING CODE 3110-01-M

**CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)**

<u>DEFERRAL NO.</u>	<u>ITEM</u>	<u>BUDGET AUTHORITY*</u>
Funds Appropriated to the President:		
International Security Assistance:		
D90-1A	Economic support fund.....	2,069,078
D90-8	Foreign military financing.....	4,156,642
D90-9	International military education and training.....	23,293
Department of Agriculture:		
Forest Service:		
D90-3A	Cooperative work.....	777,337
Department of State:		
Bureau of Refugee Programs:		
D90-6A	United States emergency refugee and migration assistance fund.....	49,829
Department of Transportation:		
Federal Aviation Administration:		
D90-7A	Facilities and equipment, Airport and airway trust fund.....	1,175,425
Total, deferrals.....		
8,251,605		

* Detail does not add to total due to rounding.

**SUMMARY OF SPECIAL MESSAGES
FOR FY 1990
(in thousands of dollars)**

	<u>RESCISSESNS</u>	<u>DEFERALS*</u>
Second special message:		
New items.....	---	4,179,935
Revisions to previous special messages..	---	2,888,075
Effects of second special message.....	---	7,068,010
Amounts from previous special messages that are changed by this message (changes noted above).....	---	1,183,594
Subtotal, rescissions and deferrals.....	---	8,251,605
Amounts from previous special messages that are not changed by this message....	---	196,806
Total amount proposed to date in all special messages.....	---	8,448,410

* Detail does not add to total due to rounding.

D90-1A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-1 transmitted to Congress on October 2, 1989.

This revision increases by \$1,798,078,500 the previous deferral of \$271,000,000 in the Economic support fund, resulting in a total deferral of \$2,069,078,500. The increase results from the routine deferral of funds included in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989. Funds are deferred pending approval of specific grants by the Secretary of State.

Deferral No: D90-1A

DEFERRAL OF BUDGET AUTHORITY
 Report Pursuant to Section 1013 of P.L. 93-344

<u>AGENCY:</u> Funds Appropriated to the President		New budget authority..... \$ <u>3,191,218,500</u> <u>(P.L. 101-167)</u>																								
<u>Bureau:</u> International Security Assistance		Other budgetary resources.* <u>3,259,500,000</u>																								
<u>Appropriation title and symbol:</u>		Total budgetary resources. <u>6,450,718,500</u>																								
Economic support fund 1/ 119/01037 11X1037 110/11037		<u>Amount to be deferred:</u> Part of year.....* <u>\$ 2,069,078,500</u>																								
		Entire year.....																								
<u>OMB identification code:</u> <u>11-1037-0-1-152</u>		<u>Legal authority (in addition to sec.</u> <u>1013):</u>																								
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other																								
<u>Type of account or fund:</u>		<u>Type of budget authority:</u>																								
<input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multiple-year* <u>Sept. 30, 1990</u> <input checked="" type="checkbox"/> No-Year		<input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other																								
<u>Coverage:</u>		<table border="1"> <thead> <tr> <th style="text-align: left;">OMB</th> <th style="text-align: left;">Amount</th> </tr> <tr> <th style="text-align: left;">Account</th> <th style="text-align: left;">Reported</th> </tr> <tr> <th style="text-align: left;">Identification</th> <th style="text-align: left;">Deferred</th> </tr> <tr> <th style="text-align: left;">Symbol</th> <th style="text-align: left;">Code</th> </tr> </thead> <tbody> <tr> <td>Economic support fund.....</td> <td>11X1037</td> <td>11-1037-0-1-152</td> <td>\$1,000,000</td> </tr> <tr> <td>Economic support fund.....</td> <td>119/01037</td> <td>11-1037-0-1-152</td> <td>2/ 270,000,000</td> </tr> <tr> <td>Economic support fund.....</td> <td>110/11037</td> <td>11-1037-0-1-152</td> <td>*<u>1,798,078,500</u></td> </tr> <tr> <td></td> <td></td> <td></td> <td>2,069,078,500</td> </tr> </tbody> </table>	OMB	Amount	Account	Reported	Identification	Deferred	Symbol	Code	Economic support fund.....	11X1037	11-1037-0-1-152	\$1,000,000	Economic support fund.....	119/01037	11-1037-0-1-152	2/ 270,000,000	Economic support fund.....	110/11037	11-1037-0-1-152	* <u>1,798,078,500</u>				2,069,078,500
OMB	Amount																									
Account	Reported																									
Identification	Deferred																									
Symbol	Code																									
Economic support fund.....	11X1037	11-1037-0-1-152	\$1,000,000																							
Economic support fund.....	119/01037	11-1037-0-1-152	2/ 270,000,000																							
Economic support fund.....	110/11037	11-1037-0-1-152	* <u>1,798,078,500</u>																							
			2,069,078,500																							

Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the

1/ These accounts were the subject of a similar deferral in 1989 (D89-1A).

2/ As reflected in the Cumulative Report on Rescissions and Deferrals for January 1990, the amount deferred was reduced to \$200,050,000 subsequent to transmittal of the First Special Message for FY 1990.

* Revised from previous report.

D90-1A

Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D90-8

DEFERRAL OF BUDGET AUTHORITY
 Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... \$ <u>4,827,642,055</u> <small>(P.L. 101-167)</small>
Bureau: International Security Assistance	Other budgetary resources. _____
Appropriation title and symbol:	Total budgetary resources. <u>4,827,642,055</u>
Foreign Military Financing (FMF) 1/ 110/1082	Amount to be deferred: Part of year..... \$ <u>4,156,642,055</u> Entire year..... _____
OMB identification code: <u>11-1082-0-1-152</u>	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____
Type of account or fund: <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multiple-year _____ <small>(expiration date)</small> <input type="checkbox"/> No-Year	

Justification: The President is authorized by the Arms Export Control Act to sell or finance by grant, credit, or guarantee articles and defense services to friendly countries to facilitate the common defense and is further authorized by the International Narcotics Control Act of 1989 to provide military and law enforcement assistance to counter illegal narcotics. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit transactions that are based upon national security and financial policies. These funds have been deferred pending the approval of the Departments of State, Defense and Treasury for the.

1/ This account was the subject of a similar deferral in 1989 (D89-11).

~~DO NOT FLOW INFORMATION~~

D90-8

specific sales to eligible countries. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D90-9

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... \$ <u>46,263,000</u> (P.L. 101-167) Other budgetary resources.
Bureau: International Security Assistance	Total budgetary resources. <u>46,293,000</u>
Appropriation title and symbol: International Military Education and Training (IMET) 1/	Amount to be deferred: Part of year..... \$ <u>23,293,000</u> Entire year.....
OMB identification code: <u>11-1081-0-1-152</u>	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other
Type of account or fund: <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multiple-year (expiration date) <input type="checkbox"/> No-Year	

Justification: The President is authorized by the Foreign Assistance Act to provide grant military training to friendly countries to facilitate common defense. Under section 541 of the Act, the President is authorized to carry out this training. Executive Order No. 12163 delegates this authority to the Secretary of State and requires him to obtain the prior concurrence of the Secretary of Defense regarding the allocations of specific programs by the Departments of State and Defense. Consultation between these departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1989 (D89-13).

D90-3A

Supplemental Report**Report Pursuant to Section 1014(c) of Public Law 93-344**

This report updates Deferral No. D90-3 transmitted to Congress on October 2, 1989.

This revision to a deferral of the Department of Agriculture, Forest Service, Cooperative work account, increases the amount previously reported deferred from \$410,189,092 to \$777,337,092. This increase of \$367,148,000 is composed of repayments to this account of prior year advances made to other accounts for firefighting costs.

Deferral No: D90-3A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:	New budget authority.....*\$ <u>315,117,000</u> (16 U.S.C. 576b) Other budgetary resources..* <u>773,319,092</u>
Bureau:	Total budgetary resources..* <u>1,088,436,092</u>
Forest Service	
Appropriation title and symbol:	
Cooperative work 1/	Amount to be deferred: Part of year.....*\$ <u>777,337,092</u>
12X8028	Entire year.....
OMB identification code:	Legal authority (in addition to sec. 1013):
12-8028-0-7-302	<input checked="" type="checkbox"/> Antideficiency Act
Grant program:	<input type="checkbox"/> Other _____
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of account or fund:	Type of budget authority:
<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Appropriation
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input type="checkbox"/> Contract authority
<input checked="" type="checkbox"/> No-Year	<input type="checkbox"/> Other _____

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1989 (D89-1A)

* Revised from previous report (D90-3).

D90-6A

Supplemental Report**Report Pursuant to Section 1014(c) of Public Law 93-344**

This report updates Deferral No. D90-6 transmitted to Congress on October 2, 1989.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported deferred from \$44,000 to \$49,829,000. This increase of \$49,785,000 results from the routine deferral of 1990 appropriations pending Presidential designation of the refugees to be assisted.

Deferral No: D90-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: <u>Department of State</u> Bureau: <u>Bureau for Refugee Programs</u> Appropriation title and symbol: <u>United States emergency refugee and migration assistance fund 1/</u> 11X0040	New budget authority.....* \$ 49,785,000 (P.L.101-167) Other budgetary resources.* 44,000 Total budgetary resources.* 49,829,000
OMB identification code: <u>11-0040-0-1-151</u>	Amount to be deferred: Part of year.....* \$ 49,829,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Entire year.....
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multiple-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

Justification: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed \$50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

1/ This account was the subject of a similar deferral in 1989 (D89-9A).

* Revised from previous report.

D90-6A

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D90-7A

Supplemental Report**Report Pursuant to Section 1014(c) of Public Law 93-344**

This report updates Deferral No. D90-7 transmitted to Congress on October 2, 1989.

This revision increases by \$673,063,844 the previous deferral of \$502,361,204 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of \$1,175,425,048. The increase results from projects and equipment funded in the Department of Transportation and Related Agencies Appropriation Act, 1990, that cannot be contracted or contracted for this year.

Deferral No: D90-7A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: <u>Department of Transportation</u>	New budget authority..... *\$1,741,248,000 (P.L. 101-164)
Bureau: <u>Federal Aviation Administration</u>	Other budgetary resources. * 1,425,088,567
Appropriation title and symbol: <u>Facilities and equipment (Air-</u> <u>port and airway trust fund) 1/</u>	Total budgetary resources. * 3,166,336,567
Facilities and equipment (Air- port and airway trust fund) 1/	Amount to be deferred: Part of year..... \$ _____
69X8107 690/48107 699/38107 697/18107 698/28107 696/08107	Entire year..... * 1,175,425,048
OMB identification code: <u>69-8107-0-7-402</u>	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Type of budget authority: <input type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual Sept. 30, 1990 <input type="checkbox"/> Sept. 30, 1991 <input checked="" type="checkbox"/> Multiple-year <u>Sept. 30, 1992</u> (expiration date) <input checked="" type="checkbox"/> No-Year Sept. 30, 1993 Sept. 30, 1994	

Justification: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress.

1/ This account was the subject of similar deferral in 1989 (D89-10A).

* Revised from previous report.

D90-7A

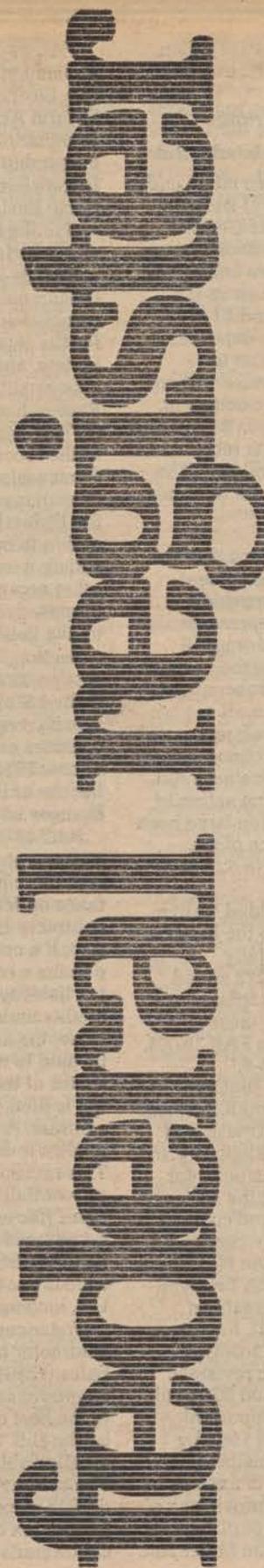
Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with FAA's full funding approach and Congressional intent to provide resources for a project's total cost, and is taken under provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 90-2587 Filed 2-2-90; 8:45 am]

BILLING CODE 3110-01-C



Monday
February 5, 1990

Part VII

Department of Defense General Services Administration National Aeronautics and Space Administration

**48 CFR Parts 5, 6, 14 et al.
Federal Acquisition Regulation (FAR)
Miscellaneous Amendments; Interim Rule
With Request for Comments and Final
Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

**48 CFR Parts 5, 6, 14, 15, 17, 19, 22, 28,
29, 31, 35, 46, 47, 48, 52, and 53**

**RIN 9000-AA29, 9000-AC98, 9000-AD47,
9000-AC65, 9000-AC35, 9000-AC84, 9000-
AC35**

[Federal Acquisition Circular 84-56]

**Federal Acquisition Regulation (FAR);
Miscellaneous Amendments**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-56 amends the Federal Acquisition Regulation (FAR) with respect to the following:

Misrepresentations—False Representations; Walsh-Healey and Miller Act Bonding; Transfer of 8(a) Contract; Federally Funded Research and Development Centers (FFRDC's); Threshold, part 5; Threshold, part 6; Additional Awards; Nonmanufacturers Size Standards; Address Corrections and Clarification; Professional and Consulting Services Costs; Double Recovery in FMS Contracts; Small Purchase References in part 46; Evaluation of Multiple Awards; Cargo Preference Act-FAR; Value Engineering; Architect-Engineering; New Mexico State Tax and Other Editorial Corrections; and FAR Matrix Revision through FAC 84-56.

DATES: Effective Date: March 7, 1990 except for (interim rules, Items I, II, and III) subparts 19.0, 19.3, 19.7, 19.8, and the related clauses at 52.219-1, 52.219-2, 52.219-8, 52.219-9, 52.219-11, 52.219-12, 52.219-17, and 52.219-18 that are effective February 5, 1990.

Comment Date: Comments on the three interim rules should be submitted to the FAR Secretariat at the address shown below on or before April 6, 1990 to be considered in the formulation of a final rule. Please cite FAC 84-56, Item I, II, or III, in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat,

Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-56.

SUPPLEMENTARY INFORMATION:**A. Determination to Issue Interim Rules**

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Items I, II, and III of FAC 84-56 as interim rules. It is determined that compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating the final rules.

B. Background

FAC 84-56, Item I. Section 405 of the Business Opportunity Development Reform Act of 1988 (Act) provides specific penalties for misrepresentation of status as small business or small disadvantaged business for the purpose of obtaining a contract or subcontract under one of the small or small disadvantaged business preference programs authorized by sections 8(a), 8(d), 9, or 15 of the Small Business Act. Responsibilities for initiating action in the case of misrepresentation have been included in 19.301(d). Notice of the penalty has been included in 52.219-1 and 52.219-9.

Section 207 of the Act added Native Hawaiian Organizations to the list of groups presumed to be socially disadvantaged. Pub. L. 99-272 added similar coverage for Indian tribes. Revisions to accommodate these changes have been made in FAR 19.001, 19.703, 52.219-1, and 52.219-8.

Section 201(a) of the Act requires establishment within the Small Business Administration (SBA) of a Division of Program Certification and Eligibility and assigns the division responsibility for deciding protests regarding the status of a concern as a disadvantaged concern for purposes of any program conducted under the authority of section 8(d) of the Small Business Act. The SBA finalized its rules governing such protests on March 13, 1989 (54 FR 10271). Revisions have been made in FAR 19.703(a)(2).

FAC 84-56, Item II. These revisions implement portions of section 301(b) of Pub. L. 100-656, Business Opportunity Development Reform Act of 1988, by acknowledging the Small Business Administration's authority to exempt certain 8(a) contracts from provisions of the Walsh-Healey Act and performance and bond requirements of the Miller Act.

FAC 84-56, Item III. These revisions implement section 407 of Pub. L. 100-656, Business Opportunity Development Reform Act of 1988, which requires termination of an 8(a) contract when ownership or control of the 8(a) concern is transferred. The Administrator of the Small Business Administration may waive the termination requirement under certain conditions.

FAC 84-56, Item IV. Office of Federal Procurement Policy (OFPP) Letter 84-1 established Governmentwide policies for the establishment, use, periodic review, and termination of the sponsorship of Federally Funded Research and Development Centers (FFRDC's). The Policy Letter was issued at the recommendation of the Commission on Government Procurement, which recommended that the Federal Government keep open the option to organize and use FFRDC's to satisfy needs that cannot be satisfied by other organizational resources. The proposed changes to the FAR are based on the Policy Letter.

Section 912 of Pub. L. 99-500 added section 2367 to Chapter 139 of Title 10, United States Code. This section places specific restrictions on certain civilian agencies and DoD regarding the creation of new FFRDC's, and on DoD regarding the use of FFRDC's. The regulatory changes implement 10 U.S.C. 2367.

FAC 84-56, Item XI. The clauses at 52.229-8 and 52.229-9 and the contract cost principles at 31.205-41 regarding taxes on foreign cost-reimbursement contracts are being revised to require that, if a contractor or subcontractor obtains a reduction of its U.S. income tax liability because of foreign tax credits under the Internal Revenue Code, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax is filed, and not credited to the contract. A similar clause, FAR 52.229-6, applies to foreign fixed-price contracts. This revision precludes the possibility of a "windfall" from the payment of foreign taxes (for which contractors are reimbursed by the U.S. under a contract) resulting from a contractor or subcontractor receiving a credit on its U.S. income taxes.

Under current FAR provisions, a U.S. contractor performing a Foreign Military Sales (FMS) contract in a foreign country may properly pay an income tax to the host country and be reimbursed by the U.S. Government for that tax as an allowable cost under the contract. The contractor may then receive a double recovery of the tax because the foreign tax credit will reduce the contractor's U.S. income tax liability to

the extent of the tax. The changes preclude this double recovery by requiring that the amount of the reduction be paid to the Treasurer of the United States at the time the Federal income tax return is filed.

FAC 84-56, Item XII. This case arose as a result of a study concerning FAR threshold requirements. The revisions will eliminate the need to adjust the amount in 46.805 whenever the small purchase limitation in 13.000 is changed.

FAC 84-56, Item XIII. The provisions at 52.214-22 and 52.215-34 are being revised to reflect a new amount for evaluating proposals to determine if a multiple award would be economically advantageous to the Government. The amount is increased for evaluation purposes from \$250 to \$500.

FAC 84-56, Item XV. The current Value Engineering (VE) clause for use in Architect-Engineering (A-E) contracts contains coverage similar to that contained in the VE program clause for supply and service contracts. However, currently there is no sharing of VE savings in A-E contracts although sharing seems to be implied by some of the terms in the clause at 52.248-2, such as Value Engineering Change Proposal (VECP) and VE program, which have always been closely associated with sharing VE savings with the contractor. Savings are not shared because of the nature of A-E contracting. The method of performance of the work, the time involved by each professional discipline, and the necessary incidental services required are all thoroughly discussed and negotiated before award of the contract. Any changes to these aspects of the contract are normally implemented by engineering change proposals.

FAR 52.248-2 is amended to delete the term VECP and to add the definition "VE proposal," "Life cycle cost," and "Value engineering," as related to A-E contracting, while still providing for a funded VE effort. FAR 48.001, 48.102(h), 48.104-1(c), and 48.201(f) are also revised. This eliminates confusion, clarifies the application of VE provisions to A-E contracts, makes it clear that savings will not be shared, and aligns policy with current practice.

C. Regulatory Flexibility Act

FAC 84-56, Items I, II, and III. The requirements of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) were addressed by the Small Business Administration in development of its regulations implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, published in the Federal Register on March 23, 1989 (54 FR 12054).

FAC 84-56, Items IV, X, and XI. DoD, GSA, and NASA certify that these final rules in FAC 84-54 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because—

Item IV. The scope and mission of Federally Funded Research and Development Centers (FFRDC's) is generally limited, and they are not permitted to compete with any non-FFRDC concern in response to a Federal agency formal request for proposal.

Item X. Small businesses generally do not have cost or incentive contracts where allowability of costs is a major concern.

Item XI. These types of cost-reimbursement FMS contracts performed in foreign countries are generally performed by large entities. No public comments were received that addressed the Regulatory Flexibility Act Statement published with the proposed rule.

FAC 84-56, Items V, VI, IX, XII, XIV, XV, and XVI. The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

However, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 in correspondence pertaining to the items in FAC 84-56.

FAC 84-56, Item VIII. The requirements of the Act were addressed by the Small Business Administration published in the Federal Register on March 31, 1989 (54 FR 13180).

FAC 84-56, Item XIII. It is expected that this final rule will have a significant impact on a number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). A final Regulatory

Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Act

FAC 84-56, Items I, II, and III. The requirements of the Act were addressed by the Small Business Administration in the development of its regulations implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, published in the Federal Register on March 23, 1989 (54 FR 12054).

FAC 84-56, Items IV through XVI. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

E. Public Comments

FAC 84-56, Items IV, VII, X, XI, XIII, and XV. The comments that were received were considered by the Councils in the development of the following final rules:

Item IV. On March 7, 1989, a proposed rule was published in the Federal Register (54 FR 9720).

Item VII. On April 25, 1989, a proposed rule was published in the Federal Register (54 FR 17894).

Item X. On October 21, 1988, a proposed rule was published in the Federal Register (53 FR 41530).

Item XI. On April 14, 1988, a proposed rule was published in the Federal Register (53 FR 12501).

Item XIII. On February 21, 1989, a proposed rule was published in the Federal Register (54 FR 7515).

Item XV. On March 23, 1989, a proposed rule was published in the Federal Register (54 FR 12122).

List of Subjects in 48 CFR Parts 5, 6, 14, 15, 17, 19, 22, 28, 29, 31, 35, 46, 47, 48, 52, and 53

Government procurement.

Dated: January 29, 1990.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84-56]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-56 is effective March 7, 1990, except for (Interim rules, Items I, II, and III) subparts 19.0, 19.3, 19.7, 19.8, and the related clauses at 52.219-1, 52.219-2,

52.219-8, 52.219-9, 52.219-11, 52.219-12, 52.219-17, and 52.219-18 that are effective February 5, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement, Department of Defense.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

Federal Acquisition Circular (FAC) 84-56 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Misrepresentations—False Representations

FAR subparts 19.0, 19.3, and 19.7 and the clauses at 52.219-1, 52.219-2, 52.219-8, and 52.219-9 are revised to implement sections 201(a), 207, and 405 of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656.

Item II—Walsh-Healey and Miller Act Bonding

FAR 19.803(a)(3), 19.808-1(b), 19.811-1(b)(5), 19.811-3 (a) and (b), and the clauses at 52.219-11 and 52.219-12 are revised to acknowledge the Small Business Administration's authority to exempt certain section 8(a) contracts from provisions of the Walsh-Healey Act and performance and payment bond requirements of the Miller Act.

Item III—Transfer of 8(A) Contract

FAR 19.812 and the clauses at 52.219-11, 52.219-12, 52.219.17, and 52.219-18 are revised to require that contracting officers terminate a section 8(a) contract for convenience when requested to do so by the Small Business Administration as a result of a transfer of ownership or control of the 8(a) concern. The contracting activity may request a waiver of the termination requirement when the head of the contracting activity determines that termination of the contract would severely impair attainment of the agency's program objectives.

Item IV—Federally Funded Research and Development Centers (FFRDC's)

FAR 5.205, 17.504, 35.000, 35.001, 35.017 are revised to implement Office of Federal Procurement Policy Letter 84-1, on Federally Funded Research and Development Centers, and the requirements of Pub. L. 99-500.

Item V—Threshold, Part 5

FAR 5.303(b) is revised to increase the threshold for inclusion of certain specific information in local press

releases from \$10,000 to the small purchase limitation.

Item VI—Threshold, Part 6

FAR 6.304(a) is revised to authorize contracting officer approval of justifications for other than full and open competition for proposed contracts that do not exceed \$100,000, unless a higher level is established by agency regulations.

Item VII—Additional Awards

FAR 14.407-1(c)(4) is revised to clarify that notice of potential subsequent award must be provided with each award that may be followed by a subsequent award. FAR 15.1002 is revised to require that, when an award is made to an offeror for less than all of the items that may be awarded to that offeror, and additional items are being withheld for subsequent award, the award notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

Item VIII—Nonmanufacturers Size Standards

FAR 19.102 is revised to clarify the requirement that nonmanufacturer offerors on small business set-aside contracts must be small businesses and establishes a size standard of 500 employees for such nonmanufacturers, and to cross reference the nonmanufacturer provisions to the limitations on subcontracting.

Item IX—Address Corrections and Clarification

FAR 35.010 is revised, and 53.235 and Standard Form (SF) 298, Report Documentation Page, have been added to clarify that there are two separate and distinct libraries of scientific and technical information resulting from Government contracts. One, the Defense Technical Information Center (DTIC), receives and disseminates publications generated on Department of Defense (DoD) contracts while the other, National Technical Information Service (NTIS), receives and disseminates publications generated on non-DoD contracts. Additional revisions were made to acknowledge the development of a SF 298 to be used in submitting a publication to DTIC or NTIS. The SF 298 is prescribed for use in the recently adopted American National Standards Institute (ANSI) American National Standard ANSI Z39.18-1989, Scientific and Technical Reports: Organization, Preparation, and Production.

Item X—Professional and Consulting Services Costs

FAR 31.205-33 is amended to (a) include samples of services covered by the cost principle, (b) delineate unallowable costs arising from illegal or improper business practices, and (c) clarify the documentation requirements for supporting the allowability of professional and consultant costs.

Item XI—Double Recovery in FMS Contracts

FAR 31.205-41 contract cost principles and the clauses at 52.229-8 and 52.229-9 are revised regarding taxes on foreign cost-reimbursement contracts.

Item XII—Small Purchase References in Part 46

FAR 46.805 is revised to reference the small purchase limitation in FAR 13.000 rather than state specifically the current \$25,000 limitation.

Item XIII—Evaluation of Multiple Awards

The provisions at 52.214-22 and 52.215-34 are revised to reflect a new amount for evaluating proposals to determine if a multiple award would be economically advantageous to the Government. The amount is increased for evaluation purposes from \$250 to \$500.

Item XIV—Cargo Preference Act—FAR

FAR 47.500 is revised to indicate that Subpart 47.5, Ocean Transportation by U.S. Flag Vessels, does not apply to the Department of Defense.

Item XV—Value Engineering, Architect-Engineering

FAR 48.001, 48.102(h), 48.104-1(c), 48.201(f), and the clause at 52.248-2 are revised to clarify the application of Value Engineering (VE) to contracts for architect-engineering (A-E) services.

Item XVI—New Mexico State Tax and Other Editorial Changes

FAR 29.401-6(c)(1) is revised to add the United States Department of Health and Human Services to the list of Departments which have entered into agreements with the State of New Mexico.

FAR 22.608-2 and 22.608-3 are revised to correct an address error in FAC 84-49.

FAR 28.308(a) is revised to correct the reference in the first sentence to read "31,000."

FAR 42.302(a)(65) is revised to correct a reference in FAC 84-51.

FAR 53.301-1424, 53.301-1426, 53.301-1427, 53.301-1428, 53.301-1429, 53.301-

1430, 53.301-1431, 53.301-1432, 53.301-1433, 53.301-1434, 53.301-1435, 53.301-1436, 53.301-1437, 53.301-1438, 53.301-1439, and 53.301-1440 are revised to display the latest edition of SF 1424 and SF's 1426 through 1440. Under the Paperwork Reduction Act, there is a requirement to update the OMB Control Number, and to include a burden statement and the expiration date of the paperwork clearance.

FAR 52.214-5(a)(1) is revised to correct an error in FAC 84-53; the date of the clause is not revised.

Item XVII—FAR Matrix Revision Through FAC 84-56

The FAR's provision/clause matrix has been updated to reflect pertinent provision and clause changes in FAC's 84-14 through 84-56, as well as a number of recommendations that have been received since the FAR's inception.

The format has been revised to consolidate the respective matrices into a single matrix, thus—

Reduce the volume by over 50 percent; Make the matrix easier to analyze, maintain, and use; and

Facilitate timely matrix updates.

Minor adjustments have been made to matrix-related coverage in FAR 52.101, 52.102-1, 52.102-2, and subpart 52.3 to reflect the revised matrix format.

Since the matrix is not a regulatory document, the revised matrix is being published in looseleaf form, but not in the *Federal Register*.

Therefore, 48 CFR parts 5, 6, 14, 15, 17, 19, 22, 28, 29, 31, 35, 46, 47, 48, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 5, 6, 14, 15, 17, 19, 22, 28, 29, 31, 35, 46, 47, 48, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.205 is amended by redesignating the existing paragraphs (b) through (e) as (c) through (f) and by adding a new paragraph (b) to read as follows:

5.205 Special situations.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see part 35) or before changing its basic purpose and mission, the sponsor shall place at least three notices over a 90-day period in the Commerce Business Daily and the *Federal Register*, indicating the agency's intention to

sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice shall indicate the scope and nature of the effort to be performed and request comments. Notice is not required where action is required by law.

* * * * *

3. Section 5.303 is amended by revising the second sentence in paragraph (b) to read as follows:

5.303 Announcement of contract awards.

* * * * *

(b) *Local announcement.* * * * When local announcements are made for contract awards in excess of the small purchase limitation in 13.000, they shall include—

PART 6—COMPETITION REQUIREMENTS

4. Section 6.304 is amended by revising paragraph (a)(1) to read as follows:

6.304 Approval of the justification.

(a) * * *

(1) For a proposed contract not exceeding \$100,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

PART 14—SEALED BIDDING

5. Section 14.407-1 is amended by revising paragraph (c)(4) to read as follows:

14.407-1 General.

(c) * * *

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the Government may make subsequent awards on those additional items within the bid acceptance period.

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.1002 is amended by adding a second sentence to read as follows:

15.1002 Notification to successful offeror.

* * * When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, each notice shall

state that the Government may make subsequent awards on those additional items within the offer acceptance period.

PART 17—SPECIAL CONTRACTING METHODS

7. Section 17.504 is amended by adding paragraph (e) to read as follows:

17.504 Ordering procedures.

* * * * *

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using less than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERN

8. Section 19.001 is amended by revising the definition "Small disadvantaged business concern"; the introductory text of paragraph (b) in the definition "Economically disadvantaged individuals"; in the definitions in paragraphs (b)(1) and (b)(2); and by adding a definition in paragraphs (b)(1) and (b)(2); and by adding a definition in paragraph (c) and in (d) to read as follows:

19.001 Definitions.

* * * * *

Small disadvantaged business concern means a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at

least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR part 124.

(b) *Economically disadvantaged individuals* means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged.

(1) *Subcontinent Asian Americans* means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(2) *Asian Pacific Americans* means United States citizens whose origins area in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunel, Republic of the Marshall Islands, or the Federated States of Micronesia.

(c) *Native Hawaiian Organization* means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

(d) *Indian tribe* means any Indian tribe, band, nation, or other organized group of community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

9. Section 19.102 is amended by revising the introductory text of paragraph (f); by adding a sixth sentence in paragraph (f)(1); by removing the second sentence in

paragraph (f)(4); and by revising the headings of Divisions F and G of the table in paragraph (g) to read as follows:

19.102 Size standards.

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—

(1) * * * However, see the limitations on subcontracting at 52.219-14 which apply to any small business offeror other than a regular dealer for purposes of set-asides and 8(a) awards.

(g) * * *

DIVISION F—WHOLESALE TRADE

(Not Applicable to Government Acquisition of Supplies. The nonmanufacturer size standard of 500 employees shall be used for Government acquisition of supplies.)

DIVISION G—RETAIL TRADE

(Not Applicable to Government Acquisition of Supplies. The nonmanufacturer size standard of 500 employees shall be used for Government acquisition of supplies.)

10. Section 19.301 is amended by adding paragraph (d) to read as follows:

19.301 Representation by the offeror.

(d) If the SBA determines that the status of a concern as a "small business" or a "small disadvantaged business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 124.8.

11. Section 19.703 is amended by revising paragraph (a)(2) to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) To represent itself as a small disadvantaged business concern, a concern must meet the definition in

19.001. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) may represent themselves as socially and economically disadvantaged. Individuals who are not members of named groups may also represent themselves, and participate in the program, as socially and economically disadvantaged if they are qualified by the SBA under the procedures in 13 CFR 124.105(c).

Concerns who certify that they are tribally-owned entities or Native Hawaiian Organizations may represent themselves as socially and economically disadvantaged if they qualify under the requirements of 13 CFR 124.112 or 13 CFR 124.113 respectively. The Office of Minority Small Business and Capital Ownership Development in the SBA has the final authority to determine the eligibility of a concern to be designated as a small disadvantaged business concern, and will answer inquiries from contractors and others regarding eligibility. Formal protests of a subcontractor's eligibility as a small disadvantaged business may be initiated only by the contracting officer responsible for the prime contract or by the SBA. Such protests will be processed in accordance with 13 CFR 124.6. Other small business subcontractors and the prime contractor may submit information to the contracting officer in an effort to persuade the contracting officer to initiate a protest. Such protests, in order to be considered timely, must be received by the contracting officer prior to completion of performance by the intended subcontractor.

12. Section 19.803 is amended by revising paragraph (a)(3) to read as follows:

19.803 Selecting acquisitions for the 8(a) Program.

(a) * * *

(3) The firm's present production capacity and related facilities. From August 15, 1988, through October 1, 1992, the SBA is authorized to grant 8(a) firms exemptions from the requirements of section 1(a) of the Walsh-Healey Act in accordance with 13 CFR 124.304.

13. Section 19.808-1 is amended by revising paragraph (b) to read as follows:

19.808-1 Sole source.

(b) The SBA's contractor should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award and determining whether the 8(a) contractor shall be required to provide bonds. For construction contracts not exceeding \$3 million (including options), from August 15, 1988, through October 1, 1992, the SBA is authorized to exempt its contractor from Miller Act requirements for performance and payment bonds in accordance with 13 CFR 124.305. When an exemption is being favorably considered, the SBA will request and heavily weigh the written views of the contracting activity in determining whether to grant a bond exemption.

14. Section 19.811-1 is amended by revising paragraph (b)(5) to read as follows:

19.811-1 Sole source.

* * *

(b) * * *

(5) If the contract is for construction work, it shall include requirements of the Miller Act with respect to performance and payment bonds (see Part 28), unless SBA has granted an exemption from the bonding requirement.

* * *

15. Section 19.811-3 is amended by adding a second sentence to paragraphs (a) and (b) to read as follows:

19.811-3 Contract clauses.

(a) * * * Use the clause with its Alternate I if the contract is for construction and SBA has exempted it from the performance and payment bond requirements of the Miller Act.

(b) * * * Use the clause with its Alternate I if the contract is for construction and SBA has exempted it from the performance and payment bond requirements of the Miller Act.

* * *

16. Section 19.812 is amended by adding paragraph (d) to read as follows:

19.812 Contract administration.

* * *

(d) Section 407 of Pub. L. 100-646 requires that an 8(a) contract be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm, unless the Administrator of the SBA, on a nondelegable basis, waives the requirement for contract termination. The Administrator may

waive the termination requirement only if certain conditions exist. Moreover, a waiver of the statutory requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning a transfer of ownership or control, action must be taken immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head shall either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer shall terminate the contract for convenience upon receipt of a written request by the SBA. This statutory requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.608-2 [Amended]

22.608-3 [Amended]

17. Section 22.608-2 is amended in paragraph (f)(2) and section 22.608-3 is amended in paragraph (b)(2) by removing in both places the words "SBA Regional Officer" and inserting in each place "SBA Regional Office".

PART 28-BONDS AND INSURANCE

28.308 [Amended]

18. Section 28.308 is amended in the first sentence of paragraph (a) by removing the reference "30.102" and inserting in its place the reference "31.001".

PART 29—TAXES

29.401-6 [Amended]

19. Section 29.401-6 is amended in the second sentence of paragraph (c)(1) by alphabetically adding the agency name "United States Department of Health and Human Services".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

20. Section 31.205-33 is revised to read as follows:

31.205-33 Professional and consultant service costs.

(a) *Definition.* *Professional and consultant services*, as used in this subpart, are those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this paragraph and paragraphs (c) through (h) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205-30).

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

(1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (e.g., FAR 52.215-12, Restriction on Disclosure and Use of Data);

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor; or

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest;

(4) Services performed which are not consistent with the purpose and scope

of the services contracted for or otherwise agreed to.

(d) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with organization and reorganization (see also 31.205-27), defense of antitrust suits, defense against Government claims or appeals, or the prosecution of claims or appeals against the Government (see 33.201) are unallowable (but see 31.205-47). Such costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the contract.

(e) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either:

(1) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest, or

(2) Dual sourcing, co-production, or similar programs, are unallowable, except when—

(i) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or

(ii) When agreed to in writing by the contracting officer.

(f) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on nongovernment contracts.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

(g) Retainer fees, to be allowable, must be supported by evidence that—

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and

(4) The actual services performed are documented in accordance with paragraph (h) of this subsection.

(h) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. (See also 31.205-38(g).) However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include:

(1) Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;

(2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

(3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

21. Section 31.205-41 is amended in paragraph (d) by adding a second sentence to read as follows:

31.205-41 Taxes.

* * * *

(d) * * * If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax return because of the payment of any tax or duty allowed as contract costs, and if those costs were reimbursed by a foreign government, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is filed.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

22. Section 35.000 is amended by adding paragraph (c) to read as follows:

35.000 Scope of part.

* * * *

(c) This part also implements OFPP Policy Letter 84-1, Federally Funded Research and Development Centers (FFRDC's), by prescribing the procedures for establishment, use, review, and termination of FFRDC's.

23. Section 35.001 is amended by alphabetically adding a definition to read as follows:

35.001 Definitions.

* * * *

"Federally Funded Research and Development Centers (FFRDC's)," means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and which receive 70 percent or more of their financial support from the Government; a long-term relationship is contemplated; most or all of the facilities are owned or funded by the Government; and the FFRDC has access to Government and supplier data, employees, and facilities beyond that which is common in a normal contractual relationship. The National Science Foundation maintains the master list of FFRDC's.

* * * *

24. Section 35.010 is amended by revising paragraph (b) to read as follows:

35.010 Scientific and technical reports.

* * * *

(b) Agencies should make R&D contract results available to other Government activities and the private sector. Contracting officers shall follow agency regulations regarding such matters as national security, protection of data, and new technology dissemination policy. The contract should require that contractors send copies of scientific and technical reports resulting from DoD contracts to the Defense Technical Information Center (DTIC), Attn: DTIC-FDAC, Cameron Station, Alexandria, VA 22304-6145. DTIC provides a central service for the interchange of scientific and technical information of value to the Department of Defense and its contractors. Reports resulting from non-DoD contracts should be sent to the National Technical Information Service (NTIS), 5235 Port

Royal Road, Springfield, VA 22164. When agencies require that completed reports be covered by a report documentation page, Standard Form (SF) 298, Report Documentation Page, the contractor should submit a copy with the report.

25. Section 35.017 and sections 35.017-1 through 35.017-7 are added to read as follows:

Sec.

35.017 Federally Funded Research and Development Centers.

35.017-1 Sponsoring agreements.

35.017-2 Establishing or changing an FFRDC.

35.017-3 Using an FFRDC.

35.017-4 Reviewing FFRDC's.

35.017-5 Terminating an FFRDC.

35.017-6 Master list of FFRDC's.

35.017-7 Limitation on the creation of new FFRDC's.

35.017 Federally Funded Research and Development Centers.

(a) *Policy.*

(1) This section sets forth Federal policy regarding the establishment, use, review, and termination of Federally Funded Research and Development Centers (FFRDC's) and related sponsoring agreements.

(2) An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDC's enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector.

(3) FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm, as an

autonomous organization or as an identifiable separate operating unit of a parent organization.

(4) Long-term relationships between the Government and FFRDC's are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

(b) *Definitions.*

Nonsponsor, as used in this section, means any other organization, in or outside of the Federal Government, which funds specific work to be performed by the FFRDC and is not a party to the sponsoring agreement.

Primary sponsor, as used in this section, means the lead agency responsible for managing, administering, or monitoring overall use of the FFRDC under a multiple sponsorship agreement.

Special competency, as used in this section, means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the FFRDC to meet some special need.

Sponsor means the executive agency which manages, administers, monitors, funds, and is responsible for the overall use of an FFRDC. Multiple agency sponsorship is possible as long as one agency agrees to act as the "primary sponsor." In the event of multiple sponsors, "sponsor" refers to the primary sponsor.

35.017-1 Sponsoring agreements.

(a) In order to facilitate a long-term relationship between the Government and an FFRDC, establish the FFRDC's mission, and ensure a periodic reevaluation of the FFRDC, a written agreement of sponsorship between the Government and the FFRDC shall be prepared when the FFRDC is established. The sponsoring agreement may take various forms; it may be included in a contract between the Government and the FFRDC, or in another legal instrument under which an FFRDC accomplishes effort, or it may be in a separate written agreement. Notwithstanding its form, the sponsoring agreement shall be clearly designated as such by the sponsor.

(b) While the specific content of any sponsoring agreement will vary depending on the situation, the agreement shall contain, as a minimum, the requirements of paragraph (c) of this subsection. The requirements for, and the contents of, sponsoring agreements

may be as further specified in sponsoring agencies' policies and procedures.

(c) As a minimum, the following requirements must be addressed in either a sponsoring agreement or sponsoring agencies' policies and procedures:

(1) A statement of the purpose and mission of the FFRDC.

(2) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets, and settlement of liabilities. The responsibility for capitalization of an FFRDC must be defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC's relationship with its sponsor(s).

(3) A provision for the identification of retained earnings (reserves) and the development of a plan for their use and disposition.

(4) A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency request for proposal for other than the operation of an FFRDC. This prohibition is not required to be applied to any parent organization or other subsidiary of the parent organization in its non-FFRDC operations. Requests for information, qualifications or capabilities can be answered unless otherwise restricted by the sponsor.

(5) A delineation of whether or not the FFRDC may accept work from other than the sponsor(s). If nonsponsor work can be accepted, a delineation of the procedures to be followed, along with any limitations as to the nonsponsors from which work can be accepted (other Federal agencies, State or local governments, nonprofit or profit organizations, etc.).

(d) The sponsoring agreement or sponsoring agencies' policies and procedures may also contain, as appropriate, other provisions, such as identification of—(1) Any cost elements which will require advance agreement if cost-type contracts are used; and (2) Considerations which will affect negotiation of fees where payment of fees is determined by the sponsor(s) to be appropriate.

(e) The term of the agreement will not exceed 5 years, but can be renewed, as a result of periodic review, in increments not to exceed 5 years.

35.017-2 Establishing or changing an FFRDC.

To establish an FFRDC, or change its basic purpose and mission, the sponsor shall ensure the following:

(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see 5.205(b)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDC's.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

(i) OMB Circular A-120 is complied with when applicable, and quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

35.017-3 Using an FFRDC.

(a) All work placed with the FFRDC must be within the purpose, mission, general scope of effort, or special competency of the FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection. The nonsponsoring agency is responsible for making the determination required by 17.504 and providing the documentation required by 17.504(e). When permitted by the sponsor, a Federal agency may contract directly with the FFRDC in which case that Federal agency is responsible for compliance with part 6.

35.017-4 Reviewing FFRDC's.

(a) The sponsor, prior to extending the contract or agreement with an FFRDC,

shall conduct a comprehensive review of the use and need for the FFRDC. The review will be coordinated with any co-sponsors and may be performed in conjunction with the budget process. If the sponsor determines that its sponsorship is no longer appropriate, it shall apprise other agencies which use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship shall rest with the head of the sponsoring agency. This determination shall be based upon the results of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review should include the following:

(1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the sponsor's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with 35.017-1.

35.017-5 Terminating and FFRDC.

When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it shall be phased out.

35.017-6 Master list of FFRDC's.

The National Science Foundation (NSF) maintains a master Government list of FFRDC's. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

35.017-7 Limitation on the creation of new FFRDC's.

Pursuant to 10 U.S.C. 2367, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary

of Transportation, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until (a) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and (b) a period of 60 days, beginning on the date such report is received by Congress, has elapsed.

PART 42—CONTRACT ADMINISTRATION

42.302 [Amended]

26. Section 42.302 is amended in paragraph (a)(65) by removing the parenthetical reference "(See 4.804)" and inserting in its place "(see 42.804-5)".

PART 46—QUALITY ASSURANCE

27. Section 46.805 is amended by revising the introductory text of paragraph (a) and by revising paragraph (b) to read as follows:

46.805 Contract clauses.

(a) Contracts that exceed the small purchase limitation in 13.000. The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the small purchase limitation in 13.000 and the contract is subject to the requirements of this subpart as indicated in 46.801:

* * * * *

(b) Contracts within the small purchase limitation in 13.000. The clauses prescribed by paragraph (a) of this section are not required for contracts within the small purchase limitation in 13.000. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in subparagraph (a)(1) or (a)(4) of this section in a contract within the small purchase limitation in 13.000 and obtain any price reduction that is appropriate.

PART 47—TRANSPORTATION

28. Section 47.500 is amended by adding a second and third sentence to read as follows:

47.500 Scope of subpart.

* * * This subpart does not apply to the Department of Defense (DoD). Policy

and procedures applicable to DoD appear in DFARS subpart 247.5.

PART 48—VALUE ENGINEERING

29. Section 48.001 is amended in the first sentence of paragraph (c) in the definition "Acquisition savings", and in the definition "Sharing period" by removing the reference "48.102(f)" and inserting in its place the reference "48.102(g)" and by adding in alphabetical order the definitions "Value engineering" and "Value engineering proposal" to read as follows:

48.001 Definitions.

Value engineering, as used in this part, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

Value engineering proposal, as used in this part, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

30. Section 48.102 is amended by redesignating paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

48.102 Policies.

(h) In the case of contracts for architect-engineer services, the contract shall include a separately priced line item for mandatory value engineering of the scope and level of effort required in the statement of work. The objective is to ensure that value engineering effort is applied to specified areas of the contract that offer opportunities for significant savings to the Government. There shall be no sharing of value engineering savings in contracts for architect-engineer services.

31. Section 48.104-1 is amended in paragraph (a)(3) by removing the reference "48.102(f)" and inserting in its place the reference "48.102(g)" and by adding paragraph (c) to read as follows:

48.104-1 Sharing acquisition savings.

(c) *Architect-engineering contracts.* There shall be no sharing of value

engineering savings in contracts for architect-engineer services.

32. Section 48.201 is amended by revising paragraph (f) to read as follows:

48.201 Clauses for supply or service contracts.

(f) *Architect-engineering contracts.* The contracting officer shall insert the clause at 52.248-2, Value Engineering—Architect-Engineer, in solicitations and contracts whenever the Government requires and pays for a specific value engineering effort in architect-engineer contracts. The clause at 52.248-1, Value Engineering, shall not be used in solicitations and contracts for architect-engineer services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.000 [Amended]

33. Section 52.000 is amended in paragraph (c) by removing the word "matrices" and inserting in its place the words "a matrix".

52.100 [Amended]

34. Section 52.100 is amended in paragraph (a) by removing the word "matrices" and inserting in its place the words "the matrix".

35. Section 52.101 is amended by revising the introductory text of paragraphs (e) and (e)(1), by revising paragraph (e)(2)(i); by removing in paragraph (e)(3) the words "matrices do" and inserting in their place "matrix does"; and by revising in paragraph (e)(4) the first sentence to read as follows:

52.101 Using part 52.

(e) Matrix.

(1) The matrix in subpart 52.3 contains a column for each principal type and/or purpose of contract (e.g., fixed-price supply, cost reimbursement research and development). The matrix lists the—

(2) * * *

(i) Whether incorporation by reference is or is not authorized;

(4) The FAR matrix may be

reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. * * *

36. Section 52.102-1 is amended by revising paragraph (a)(1) to read as follows:

52.102-1 Incorporation by reference.

(a) * * *

(1) The FAR and are authorized to be incorporated by reference (see subpart 52.3); or

* * * * *

37. Section 52.102-2 is amended by revising paragraph (a)(3) to read as follows:

52.102-2 Incorporation in full text.

(a) * * *

(3) Is a FAR provision or clause that is not authorized to be incorporated by reference (see subpart 52.3);

* * * * *

38. Section 52.214-5 is amended by revising paragraph (a)(1) of the provision to read as follows:

52.214-5 Submission of bids.

(a) * * *

(1) addressed to the office specified in the solicitation, and

52.214-22 [Amended]

39. Section 52.214-22 is amended in the introductory text by inserting a colon following the word "provision" and removing the remainder of the paragraph; by removing in the title of the provision the date "(APR 1984)" and inserting in its place "(MAR 1990)"; by removing in the second sentence of the provision the figure "\$250" and inserting in its place "\$500"; and by removing the derivation line following "(End of provision)".

52.215-34 [Amended]

40. Section 52.215-34 is amended by removing in the title of the provision the date "(MAY 1986)" and inserting in its place "(MAR 1990)"; and by removing in the second sentence of the provision the figure "\$250" and inserting in its place "\$500".

41. Section 52.219-1 is revised to read as follows:

52.219-1 Small business concern representation.

As prescribed in 19.304(a), insert the following provision:

Small Business Concern Representation (Feb 1990)

(a) *Representation.* The offeror represents and certifies as part of its offer that it _____ is, _____ is not a small business concern and that _____, all, _____ not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(b) Definition.

Small business concern, as used in this provision, means a concern, including its affiliates, that is independently owned and

operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in this solicitation.

(c) *Notice.* Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in paragraph (a) of this clause in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Act. (End of provision)

42. Section 52.219-2 is revised to read as follows:

52.219-2 Small disadvantaged business concern representation.

As prescribed in 19.304(b), insert the following provision:

Small Disadvantaged Business Concern Representation (Feb 1990)

(a) *Representation.* The offeror represents that it _____ is, _____ is not a small disadvantaged business concern.

(b) *Definitions.*

Asian Pacific Americans, as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

Indian tribe, as used in this provision, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

Native Americans, as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.

Native Hawaiian Organization, as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Small business concern, as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business concern, as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

Subcontinent Asian Americans, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian Organizations. (End of provision)

43. Section 52.219-8 is amended by removing in the title of the clause the date "(JUN 1985)" and inserting in its place the date "(FEB 1990)" and by revising paragraph (c) to read as follows:

52.219-8 Utilization of small business concerns and small disadvantaged business concerns.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

* * * * *

44. Section 52.219-9 is amended by removing in the title of the clause the date "(AUG 1989)" and inserting in its place the date "(FEB 1990)": by adding paragraph (e)(4); and by removing all the derivation lines following "(End of clause)" to read as follows:

52.219-9 Small business and small disadvantaged business subcontracting plan.

(e) * * *

(4) Provide notice to subcontractors, similar to that in the solicitation provision at 52.219-1, concerning penalties for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

45. Section 52.219-11 is amended by removing in the title of the clause the date "(NOV 1989)" and inserting in its place the date "(FEB 1990)": and by adding paragraph (f) and an Alternate I to read as follows:

52.219-11 Special 8(a) contract conditions.

(f) To notify the [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

* * * * *

Alternate I (FEB 1990). In accordance with the prescription in 19.811-3(a), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) That payments to be made under the contract will be deposited directly by the [insert name of contracting activity] to a special bank account established by the subcontractor and that all disbursements will require approval and counter signature by the SBA or a third party approved by SBA.

46. Section 52.219-12 is amended by removing in the title of the clause the date "(NOV 1989)" and inserting in its place the date "(FEB 1990)"; and by adding paragraph (b)(4) and an Alternate I to read as follows:

52.219-12 Special 8(a) subcontract conditions.

(b) * * *

(4) It will notify the [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

* * *

Alternate I (FEB 1990). In accordance with the prescription in 19.811-3(b), delete paragraph (c) of the basic clause and add the following to paragraph (b):

(4) That, in accordance with section 301(b) of Pub. L. 100-856, it will establish a special account, at a bank insured by the Federal Deposit Insurance Corporation, under which (i) all payments under this subcontract will be deposited directly by the [insert name of contracting activity] and (ii) all disbursements will be subject to approval and counter signature by the SBA or a third party approved by SBA.

(5) That it will make timely payment to all suppliers of material or labor.

(6) That it will notify all suppliers of material or labor and will obtain written acknowledgment from such suppliers, that the contract is exempt from the Miller Act's bonding requirement and that neither the SBA nor the [insert name of contracting activity] are liable for payment to suppliers for materials or labor. Such acknowledgments must be provided to the SBA prior to SBA approval of disbursements to the contractor from the special bank account.

47. Section 52.219-17 is amended by removing in the title of the clause the date "(NOV 1989)" and inserting in its place the date "(FEB 1990)" and by adding paragraph (a)(4) to read as follows:

52.219-17 Section 8(a) award.

(a) * * *

(4) To notify the [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

48. Section 52.219-18 is amended by removing in the title of the clause the date "(NOV 1989)" and inserting in its place the date "(FEB 1990)" and in paragraph (d) by designating the existing text as paragraph (d)(1) and adding paragraph (d)(2) to read as follows:

52.219-18 Notification of competition limited to eligible 8(a) contracts.

(d) * * *

(2) The [insert name of SBA's contractor] will notify the [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

* * *

49. Section 52.229-8 is amended by inserting a colon in the introductory text following the word "clause" and deleting the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAR 1990)"; by designating the existing clause as paragraph (a); by adding paragraph (b); and by removing the derivation line following "(End of clause)" to read as follows:

52.229-9 Taxes—foreign cost reimbursement contracts.

* * *

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

* * *

50. Section 52.229-9 is amended by inserting a colon in the introductory text following the word "clause" and deleting the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAR 1990)"; by designating the existing clause as paragraph (a); by adding paragraph (b); and by removing the derivation line following "(End of clause)" to read as follows:

52.229-9 Taxes—cost-reimbursement contracts with foreign governments.

* * *

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

* * *

52.245-5 [Amended]

51. Section 52.245-5 is amended in the introductory text of Alternate I by

removing the reference "45.302-6(e)(2)" and inserting in its place the reference "45.106(f)(2)".

52. Section 52.248-2 is revised to read as follows: 52.248-2 Value engineering—architect-engineer.

As prescribed in 48.201(f), insert the following clause:

VALUE ENGINEERING—ARCHITECT-ENGINEER (MAR 1990)

(a) *General.* The Contractor shall (1) perform value engineering (VE) services and submit progress reports as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering proposals (VEP's). Value engineering activities shall be performed concurrently with, and without delay to, the schedule set forth in the contract. The services shall include VE evaluation and review and study of design documents immediately following completion of the 35 percent design state or at such stages as the Contracting Officer may direct. Each separately priced line item for VE services shall define specifically the scope of work to be accomplished and may include VE studies of items other than design documents. The Contractor shall be paid as the contract specifies for this effort, but shall not share in savings which may result from acceptance and use of VEP's by the Government.

(b) *Definitions.* *Life cycle cost*, as used in this clause, is the sum of all costs over the useful life of a building, system or product. It includes the cost of design, construction, acquisition, operation, maintenance, and salvage (resale) value, if any.

Value engineering, as used in this clause, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

Value engineering proposal, as used in this clause, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

(c) *Submissions.* After award of an architect-engineering contract the contractor shall—

(1) Provide the Government with a fee breakdown schedule for the VE services (such as criteria review, task team review, and bid package review) included in the contract schedule;

(2) Submit, for approval by the Contracting Officer, a list of team members and their respective resumes representing the engineering disciplines required to complete the study effort, and evidence of the team leader's qualifications and engineering discipline. Subsequent changes or substitutions to the approved VE team shall be submitted in writing to the Contracting Officer for approval; and

(3) The team leader shall be responsible for prestudy work assembly and shall edit.

reproduce, and sign the final report and each VEP. All VEP's, even if submitted earlier as an individual submission, shall be contained in the final report.

(d) *VEP preparation.* As a minimum, the contractor shall include the following information in each VEP:

(1) A description of the difference between the existing the proposed design, the comparative advantage and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance, and any pertinent objective test data.

(2) A list and analysis of design criteria or specifications that must be changed if the VEP is accepted.

(3) A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Government.

(4) A description and estimate of costs the Government may incur in implementing the VEP, such as design change cost and test and evaluation cost.

(5) A prediction of any effects the proposed change may have on life cycle cost.

(6) The effect the VEP will have on design or construction schedules.

(e) *VEP acceptance.* Approved VEP's shall be implemented by bilateral modification to this contract.

(End of clause.)

53. Subpart 52.3 is amended by revising the title and by revising § 52.300 to read as follows:

Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract (see 52.101(e)).

52.301 Solicitation provisions and contract clauses (Matrix).

PART 53—FORMS

54. Section 53.235 is added to read as follows: 53.235 Research and Development Contracting (SF 298).

SF 298 (2/89), Report Documentation Page. SF 298 is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in 35.010.

55. Section 53.245 is amended by revising the section title and paragraphs (d), (f), (g), (h), (i), and (j) to read as follows:

53.245 Government property.

(d) *SF 1424 (REV. 7/89), Inventory Disposal Report.* (See 45.615.) SF 1424 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(f) *SF 1426 (REV. 7/89), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form).* (See 45.606 and 49.602-2(e).) Standard Form 1426 and Standard Form 1427 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(g) *SF 1428 (REV. 7/89), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B-Continuation Sheet.* (See 45.606 and 49.602-2(b).) Standard Form 1428 and Standard Form 1429 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(h) *SF 1430 (REV. 7/89), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process).* (See 45.606 and 49.602-2(c).) Standard Form 1430 and Standard Form 1431 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(i) *SF 1432 (REV. 7/89), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment).* (See 45.606 and 49.602-2(d).) Standard Form 1432 and Standard Form 1433 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(j) *SF 1434 (REV. 7/89), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).* (See 45.606 and 49.602-2(e).) Standard Form 1434 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

56. Section 53.249 is amended by revising the section title and paragraphs (a)(2) through (a)(7) to read as follows:

53.249 Termination of contracts.

(a) * * *

(2) *SF 1435 (REV. 7/89), Settlement Proposal (Inventory Basis).* (See 49.602-1(a).) Standard Form 1435 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(3) *SF 1436 (REV. 7/89), Settlement Proposal (Total Cost Basis).* (See 49.602-1(b).) Standard Form 1436 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(4) *SF 1437 (REV. 7/89), Settlement Proposal for Cost-Reimbursement Type Contracts.* (See 49.602-1(c) and 49.302.) Standard Form 1437 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(5) *SF 1438 (REV. 7/89), Settlement Proposal (Short Form).* (See 49.602-1(d).) Standard Form 1438 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(6) *SF 1439 (REV. 7/89), Schedule of Accounting Information.* (See 49.602-3.) Standard Form 1439 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(7) *SF 1440 (REV. 7/89), Application for Partial Payment.* (See 49.602-4.) Standard Form 1440 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

57. Section 53.301-298 is added to read as follows: 53.301-298, Standard Form 298, report documentation page.

BILLING CODE 6820-JC-M

REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.</p>			
1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE	3. REPORT TYPE AND DATES COVERED	
4. TITLE AND SUBTITLE		5. FUNDING NUMBERS	
6. AUTHOR(S)		7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)	
8. PERFORMING ORGANIZATION REPORT NUMBER		9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)	
10. SPONSORING/MONITORING AGENCY REPORT NUMBER		11. SUPPLEMENTARY NOTES	
12a. DISTRIBUTION/AVAILABILITY STATEMENT		12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 words)		14. SUBJECT TERMS	
17. SECURITY CLASSIFICATION OF REPORT	18. SECURITY CLASSIFICATION OF THIS PAGE	19. SECURITY CLASSIFICATION OF ABSTRACT	20. LIMITATION OF ABSTRACT

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
 Prescribed by ANSI Std. Z39-18
 298-102

GENERAL INSTRUCTIONS FOR COMPLETING SF 298

The Report Documentation Page (RDP) is used in announcing and cataloging reports. It is important that this information be consistent with the rest of the report, particularly the cover and title page. Instructions for filling in each block of the form follow. It is important to stay *within the lines* to meet optical scanning requirements.

Block 1. Agency Use Only (Leave blank).

Block 2. Report Date. Full publication date including day, month, and year, if available (e.g. 1 Jan 88). Must cite at least the year.

Block 3. Type of Report and Dates Covered.

State whether report is interim, final, etc. If applicable, enter inclusive report dates (e.g. 10 Jun 87 - 30 Jun 88).

Block 4. Title and Subtitle. A title is taken from the part of the report that provides the most meaningful and complete information. When a report is prepared in more than one volume, repeat the primary title, add volume number, and include subtitle for the specific volume. On classified documents enter the title classification in parentheses.

Block 5. Funding Numbers. To include contract and grant numbers; may include program element number(s), project number(s), task number(s), and work unit number(s). Use the following labels:

C - Contract	PR - Project
G - Grant	TA - Task
PE - Program Element	WU - Work Unit Accession No.

Block 6. Author(s). Name(s) of person(s) responsible for writing the report, performing the research, or credited with the content of the report. If editor or compiler, this should follow the name(s).

Block 7. Performing Organization Name(s) and Address(es). Self-explanatory.

Block 8. Performing Organization Report Number. Enter the unique alphanumeric report number(s) assigned by the organization performing the report.

Block 9. Sponsoring/Monitoring Agency Name(s) and Address(es). Self-explanatory.

Block 10. Sponsoring/Monitoring Agency Report Number. (If known)

Block 11. Supplementary Notes. Enter information not included elsewhere such as: Prepared in cooperation with...; Trans. of...; To be published in.... When a report is revised, include a statement whether the new report supersedes or supplements the older report.

Block 12a. Distribution/Availability Statement.

Denotes public availability or limitations. Cite any availability to the public. Enter additional limitations or special markings in all capitals (e.g. NOFORN, REL, ITAR).

DOD - See DoDD 5230.24, "Distribution Statements on Technical Documents."

DOE - See authorities.

NASA - See Handbook NHB 2200.2.

NTIS - Leave blank.

Block 12b. Distribution Code.

DOD - Leave blank.

DOE - Enter DOE distribution categories from the Standard Distribution for Unclassified Scientific and Technical Reports.

NASA - Leave blank.

NTIS - Leave blank.

Block 13. Abstract. Include a brief (*Maximum 200 words*) factual summary of the most significant information contained in the report.

Block 14. Subject Terms. Keywords or phrases identifying major subjects in the report.

Block 15. Number of Pages. Enter the total number of pages.

Block 16. Price Code. Enter appropriate price code (*NTIS only*).

Blocks 17. - 19. Security Classifications. Self-explanatory. Enter U.S. Security Classification in accordance with U.S. Security Regulations (i.e., UNCLASSIFIED). If form contains classified information, stamp classification on the top and bottom of the page.

Block 20. Limitation of Abstract. This block must be completed to assign a limitation to the abstract. Enter either UL (unlimited) or SAR (same as report). An entry in this block is necessary if the abstract is to be limited. If blank, the abstract is assumed to be unlimited.

58. Section 53.301-1424 is revised to read as follows:

**53.301-1424 Standard Form 1424,
Inventory Disposal Report.**

BILLING CODE 6820-JC-M

INVENTORY DISPOSAL REPORT (See FAR 45.615)		FORM APPROVED OMB NO. 9000-0015	PLANT CLEARANCE CASE NUMBER
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.</p>			
TO: (Include ZIP Code)		FROM: (Include ZIP Code)	
1. DATE PLANT CLEARANCE CASE OPENED		2. DATE PLANT CLEARANCE CASE CLOSED	
3. NUMBER OF DAYS BETWEEN OPENING AND CLOSING			
4. NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR (Include ZIP Code)		5. IF SUBCONTRACTOR STATE NAME AND ADDRESS OF PRIME CONTRACTOR (Include ZIP Code)	
6. LOCATION OF PROPERTY (City and State)		7. CONTRACT NUMBER	8. DOCKET NUMBER (Termination only)
		9. SUBCONTRACT NUMBER	10. CONTRACTOR REFERENCE NUMBER
DISPOSITION OF PROPERTY			
ITEM DESCRIPTION	LINE ITEMS	ACQUISITION COST	PROCEEDS
11. TOTAL INVENTORY AS SUBMITTED			
12. ADJUSTMENTS (Pricing errors, shortages, etc.)			
13. ADJUSTED INVENTORY (Line 11 ± Line 12)			
14. PURCHASE OR RETENTION AT COST			
15. RETURN TO SUPPLIERS (Net Proceeds)			
16. REDISTRIBUTIONS			
A. WITHIN OWNING AGENCY			
B. OTHER AGENCIES			
TOTAL			
17. DONATIONS			
18. SALES			
19. SALES - PROCEEDS TO OVERHEAD			
20.			
21.			
22. TOTAL PROCEEDS CREDITS (Total Lines 14, 15, and 18)			
23. DESTROYED OR ABANDONED			
24. OTHER (Explain in Item 26, Remarks)			
25. TOTAL DISPOSITIONS			
26. REMARKS (Identify contract number in which proceeds were applied, or disbursing office where proceeds were deposited)			

To the best of my knowledge, disposition of all property on this case has been effected in accordance with existing regulations, all property has been accounted for and all disposal credits properly applied.

CONTRACT ADMINISTRATION OFFICE (Authorized signature and title)

DATE

59. Section 53.301-1426 is revised to read as follows:

**53.301-1426 Standard Form 1426,
Inventory Schedule A (Metals in Mill Product
Form).**

BILLING CODE 6820-JC-M

INVENTORY SCHEDULE A (METALS IN MILL PRODUCT FORM) (See FAR Section 45.606 for Instructions)		TYPE	TERMINATION	TYPE OF CONTRACT	DATE	FORM APPROVED OMB NO. 9000-0015						
		<input type="checkbox"/> FINAL	<input type="checkbox"/> NONTERMINATION	PROPERTY CLASSIFICATION		PAGE NO. NO. OF PAGES						
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data or information, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (0400-0015), Washington, D.C. 20503.</p> <p>THIS SCHEDULE APPLIES TO (Check one)</p> <p><input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER(S)</p> <p><input type="checkbox"/> GOVERNMENT PRIME CONTRACT NO. <input type="checkbox"/> SUBCONTRACT OR P.O. NO.</p>		<p>SEARCHING existing instructions, comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20503.</p> <p>COMPANY PREPARING AND SUBMITTING SCHEDULE</p>										
<p>NAME</p> <p>ADDRESS (Include Zip Code)</p> <p>PRODUCT COVERED BY CONTRACT OR ORDER</p>		<p>CITY AND STATE (Include Zip Code)</p> <p>LOCATION OF MATERIAL</p>										
<p>CONTRACTOR WHO SENT NOTICE OF TERMINATION</p>		<p>STREET ADDRESS</p>										
DESCRIPTION		DIMENSIONS			COST							
FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	FORM, SHAPE, ROLLING TREATMENT (When applicable, type of edge, Example: CR flat sheets box rod, pickled, tubing in straight length, etc.)	HEAT TREAT- MENT, TEMPER, HARDNESS, FINISH, ETC. (Example: Annealed and coiled strip, B16-42 Alloy 7 Grade B)	SPECIFI- CATIONS, AND ALLOY OR OTHER VARIA- BLE DESIGNA- TION IN THE SPECIFICATION (Example: 00-1-95-D (b5))	WIDTH (O.D. for tube diameter of rod, size for pipe, type of copper (or water tube) die no., or extruded shapes)	LENGTH (Use code condition (b5))	QUAN- TITY (b5)	UNIT OF MEASURE (b5)	UNIT COST (b5)	TOTAL COST (b5)	CONTRACTORS OFFER (b5)	FOR USE OF CONTRACT- ING AGENCY ONLY (b5)
(a)	(b)	(c)	(d)	(e)	(f)	(g)						

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory on this Schedule are in accordance with the Contractor's records and books of account. Schedule consisting of page numbers to inclusive dated _____ has been examined, and that in the exercise of the Signer's best judgment and to the best of the signor's knowledge, based upon information believed by the signor to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss, to the Contractor, on its other work; and that the costs shown NAME OF CONTRACTOR BY (Signature of Authorized Official)

NAME OF SUPERVISORY ACCOUNTING OFFICIAL
TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous Edition is Invalid
EXPIRATION DATE: 4-30-92

1420-102

STANDARD FORM 1426 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.245(f)

BILLING CODE 6820-0C-C

60. Section 53.301-1427 is revised to read as follows:

**53.301-1427 Standard Form 1427,
Inventory Schedule A—Continuation Sheet
(Metals in Mill Product Form).**

BILLING CODE 6820-JC-M

INVENTORY SCHEDULE A - CONTINUATION SHEET (METALS IN MILL PRODUCT FORM)		<input type="checkbox"/> TYPE TERMINATION		<input type="checkbox"/> NONTERMINATION		DATE		FORM APPROVED DMB NO. 9000-0015			
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Project (9000-0015), Washington, D.C. 20503.</p> <p>GOVERNMENT PRIME CONTRACT NO. <u> </u> SUBCONTRACT OR P.O. NO. <u> </u></p>		<p>REFERENCE NO. <u> </u></p>		<p>PROPERTY CLASSIFICATION</p>		<p>PAGE NO. <u> </u> NO. OF PAGES <u> </u></p>					
FOR USE OF CON- TRACT- ING AGENCY ONLY	ITEM NO.	DESCRIPTION		DIMENSIONS		QUAN- TITY (Use code condition)	UNIT OF MEASURE (Use code condition)	COST		CONTRACTOR'S OFFER	PAGE NO. <u> </u> NO. OF PAGES <u> </u>
		FORM SHAPE, ROLLING TREATMENT	HEAT TREAT- MENT, TEMPER, HARDNESS, FINISH, ETC.	THICK- NESS	WIDTH			LENGTH (b5)	UNIT (d)		
(a)	(b)	(b1)	(b2)	(b3)	(b4)	(b5)	(c)	(d)	(e)	(f)	(g)

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable
BILLING CODE 6820-1C-C

EXPIRATION DATE 4-30-92

1427-102

STANDARD FORM 1427 (REV. 7-89)
Prescribed by GSA - FAR (46 CFR) 53.225(f)

61. Section 53.301-1428 is revised to read as follows:

**53.301-1428 Standard Form 1428,
Inventory Schedule B.**

BILLING CODE 6820-JC-M

INVENTORY SCHEDULE B		Type <input checked="" type="checkbox"/> FAR Section 46.606 for Instructions <input type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL	Type of Contract <input type="checkbox"/> TERMINATION <input type="checkbox"/> NONTERMINATION	TYPE OF CONTRACT		Date	Form Approved On No. 9000-0015
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.		PROPERTY CLASSIFICATION		PAGE NO.		NO. OF PAGES	
TYPE OF INVENTORY		COMPANY PREPARING AND SUBMITTING SCHEDULE					
RAW MATERIALS <input type="checkbox"/> OTHER (then detail) <input type="checkbox"/> FINISHED PRODUCT		FINISHED COMPONENTS <input type="checkbox"/> MISCELLANEOUS					
THIS SCHEDULE APPLIES TO (Check one) <input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> GOVERNMENT PRIME CONTRACT NO. [REDACTED]		SUBCONTRACT OR PURCHASE ORDER <input type="checkbox"/> PURCHASE ORDER NO. [REDACTED]		STREET ADDRESS			
CONTRACTOR WHO SENT NOTICE OF TERMINATION NAME [REDACTED]		CITY AND STATE (Include ZIP Code)					
ADDRESS (Include ZIP Code)		LOCATION OF MATERIAL					
PRODUCT COVERED BY CONTRACT OR ORDER							
FOR USE OF CONTRACT-AGENCY ONLY	ITEM NO.	DESCRIPTION		QUAN- TITY (Use code CONDITION [REDACTED])	UNIT OF MEASURE	COST (For finished product, show contract price instead of cost)	
		ITEM DESCRIPTION	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER			UNIT	TOTAL
(a)	(b)	(b1)	(b2)	(c)	(d)	(e)	(f)
NAME OF CONTRACTOR		By (Signature of Authorized Official)					
NAME OF SUPERVISORY ACCOUNTING OFFICIAL		TITLE					
		DATE					

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers to inclusive, dated , in the exercise of the Signer's best judgment and to the best of the Signer's knowledge, based upon information believed by the Signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property quantitative requirements of the termination inventory, that the quantities are not in excess of the reasonable items reasonably usable, without loss to the Contractor; on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR _____ BY _____ (Signature of Authorized Official) TYPE _____

STANDARD FORM 1428 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.245(a)

BILLING CODE 63320.10.0

62. Section 53.301-1429 is revised to read as follows:

**53.301-1429 Standard Form 1429,
Inventory Schedule B—Continuation Sheet.**

BILLING CODE 6820-JC-M

INVENTORY SCHEDULE B - CONTINUATION SHEET

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

TYPE OF INVENTORY **RAW MATERIALS**

(Other than metals)

 PURCHASED PARTS **SUBCONTRACT OR P.O. NO.** **REFERENCE NO.****GOVERNMENT PRIME CONTRACT NO.****ITEM NO.****TYPE** **FINISHED** **COMPONENTS** **PURCHASED PARTS** **SUBCONTRACT OR P.O. NO.** **REFERENCE NO.** **PROPERTY CLASSIFICATION** **FINISHED PRODUCTS** **PLANT EQUIPMENT** **DATE** **PAGE NO.** **NO. OF PAGES****NONTERMINATION****TERMINATION****DATE****PAGE NO.****NO. OF PAGES****NONTERMINATION****TERMINATION****DATE****PAGE NO.****AUTHORIZED FOR LOCAL REPRODUCTION**

Previous edition is used.

EXPIRATION DATE: 4-30-92

1429-102

STANDARD FORM 1429 (REV. 7-80)

Prescribed by GSA - FAR (41 CFR) 53.245(q)

BILLING CODE 6820-JC-C

63. Section 53.301-1430 is revised to read as follows:

**53.301-1430 Standard Form 1430,
Inventory Schedule C (Work-in-Process).**

BILLING CODE 6820-JC-M

64. Section 53.301-1431 is revised to read as follows:

53.301-1431 Inventory Schedule C—Continuation Sheet (Work-in-Process).

BILLING CODE 6820-JC-M

UNAUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable
BILLING CODE 6820-1C-C

EXPIRATION DATE: 4-30-92 1431-102

STANDARD FORM 1431 (REV. 7-69)
Prescribed by GSA - FAR (41 CFR) 53.245(f)

65. Section 53.301-1432 is revised to read as follows:

**53.301-1432 Inventory Schedule D
(Special Tooling and Special Test Equipment).**

BILLING CODE 6820-JC-M

INVENTORY SCHEDULE D (SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT) <small>See FAR Section 45.606 for Instructions</small>		TYPE OF CONTRACT	DATE	FORM APPROVED OMB NO. 9000-0015																											
		PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES																											
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.</p> <p>THIS SCHEDULE APPLIES TO (Check one)</p> <p><input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR P.O. NO. _____</p>		COMPANY PREPARING AND SUBMITTING SCHEDULE																													
<p><input type="checkbox"/> FINAL <input checked="" type="checkbox"/> PARTIAL</p> <p><input type="checkbox"/> PURCHASE ORDER <input type="checkbox"/> SUBCONTRACT OR ORDER</p> <p>REFERENCE NO. _____</p>		<p>CITY AND STATE (Include ZIP Code)</p> <p>STREET ADDRESS</p> <p>LOCATION OF MATERIAL</p>																													
<p>CONTRACTOR WHO SENT NOTICE OF TERMINATION</p> <p>NAME _____</p> <p>ADDRESS (Include ZIP Code) _____</p>		<table border="1"> <thead> <tr> <th rowspan="2">FOR USE OF CONTRACT-ING AGENCY ONLY</th> <th rowspan="2">ITEM NO.</th> <th rowspan="2">ITEM DESCRIPTION</th> <th colspan="3">COST</th> <th rowspan="2">CONTRACTOR'S OFFER</th> <th rowspan="2">FOR USE OF CONTRACT-ING AGENCY ONLY</th> </tr> <tr> <th>QUAN-TITY</th> <th>UNIT</th> <th>TOTAL</th> </tr> </thead> <tbody> <tr> <td>(a)</td> <td>(d)</td> <td>(e)</td> <td>(f)</td> <td>(g)</td> <td>(h)</td> <td>(i)</td> <td>(j)</td> </tr> <tr> <td colspan="3">PRODUCT COVERED BY CONTRACT OR ORDER</td> <td colspan="3"></td> <td colspan="2"></td> </tr> </tbody> </table>			FOR USE OF CONTRACT-ING AGENCY ONLY	ITEM NO.	ITEM DESCRIPTION	COST			CONTRACTOR'S OFFER	FOR USE OF CONTRACT-ING AGENCY ONLY	QUAN-TITY	UNIT	TOTAL	(a)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	PRODUCT COVERED BY CONTRACT OR ORDER							
FOR USE OF CONTRACT-ING AGENCY ONLY	ITEM NO.	ITEM DESCRIPTION	COST					CONTRACTOR'S OFFER	FOR USE OF CONTRACT-ING AGENCY ONLY																						
			QUAN-TITY	UNIT	TOTAL																										
(a)	(d)	(e)	(f)	(g)	(h)	(i)	(j)																								
PRODUCT COVERED BY CONTRACT OR ORDER																															
<p>INVENTORY SCHEDULE CERTIFICATE</p> <p>The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers to inclusive, dated in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown</p> <p>BY (Signature of Authorized Official)</p>																															
<p>NAME OF SUPERVISORY ACCOUNTING OFFICIAL</p>		<p>TITLE</p> <p>DATE</p>																													

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers _____ to _____ inclusive, dated _____ has been examined, and that in the exercise of The Signer's best judgment and to the best of The Signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is determinedly inventory, that the quantities are not in excess of the reasonable requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this SCHEDULE CERTIFICATE are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR _____
BY (Signature of Authorized Official) _____
TITLE _____
DATE _____

STANDARD FORM 1432 (REV. 7-65)
Prescribed by GSA - FAR (48 CFR) 53.245(h)

66. Section 53.301-1433 is revised to read as follows:

53.301-1433 Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).

BILLING CODE 6820-JC-M

INVENTORY SCHEDULE D - CONTINUATION SHEET (SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)				DATE		FORM APPROVED OMB NO. 9000-0016	
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, Paperwork Reduction Project (9000-0016), Washington, D.C. 20503.</p>		<input type="checkbox"/> TERMINATION <input type="checkbox"/> NONTERMINATION					
GOVERNMENT PRIME CONTRACT NO.		SUBCONTRACT OR P.O. NO.		REFERENCE NO.		PAGE NO. NO. OF PAGES	
FOR USE OF CON-TRACT-ING AGENCY ONLY		ITEM DESCRIPTION		COST		FOR USE OF CON-TRACT-ING AGENCY ONLY	
(a)		(b)		CONDITON (Use Code)	QUAN- TITY	UNIT	TO PORTION NOT TO BE COMPLETED (f2)
				(c)	(d)	(e)	(f1)
							(g)

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BILLING CODE 6820-IC-C

1433-102

EXPIRATION DATE: 4-30-92

STANDBRING FIRM 1433 (REV. 7-88)
Prescribed by GSA - FAR (48 CFR) 53.245(i)

67. Section 53.301-1434 is revised to read as follows:

53.301-1434 Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).

BILLING CODE 6820-JC-M

TERMINATION INVENTORY SCHEDULE E (SHORT FORM FOR USE WITH SF 1438 ONLY) <small>(See FAR Section 46.606 for Instructions)</small>		DATE	PAGE NO.	NO. OF PAGES	FORM APPROVED OMB NO.
					9000-0015
<p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretarial (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.</p> <p>THIS SCHEDULE APPLIES TO (Check one)</p> <p><input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR P.O. NO. _____</p> <p><input type="checkbox"/> GOVERNMENT PRIME CONTRACT NO. _____</p> <p><input type="checkbox"/> PURCHASE ORDER(S) <input type="checkbox"/> SUBCONTRACT OR P.O. NO. _____</p> <p><input type="checkbox"/> REFERENCE NO. _____</p>					

CONTRACTOR WHO SENT NOTICE OF TERMINATION		CITY AND STATE (Include ZIP Code)		STREET ADDRESS	
NAME		ADDRESS (Include ZIP Code)		LOCATION OF MATERIAL	
PRODUCT COVERED BY CONTRACT OR ORDER					

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	ITEM DESCRIPTION	DESCRIPTION		QUAN-TIY	UNIT OF MEASURE	COST (For finished product, show contract price instead of cost)	CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
			GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER	TYPE OF PACKING (Bulk, tbsls, crates, etc.)					
(a)	(b)	(b1)	(b2)	(c)	(d)	(e)	(f)	(g)	
TERMINATION INVENTORY SCHEDULE CERTIFICATE									

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers _____ to _____ inclusive, and that in the exercise of the signer's best judgement and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities _____ to _____ in excess of the reasonable requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR _____
BY (Signature of Authorized Official)
NAME OF SUPERVISORY ACCOUNTING OFFICIAL _____
TITLE _____
DATE _____

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable
BILLING CODE 6820-JC-C

EXPIRATION DATE: 4-30-92
1434-102

STANDARD FORM 1434 (REV. 7-88)
Prescribed by GSA - FAR (48 CFR) 53.245(k)

68. Section 53.301-1435 is revised to read as follows:

**53.301-1435 Settlement Proposal
(Inventory Basis).**

BILLING CODE 6820-JC-M

SETTLEMENT PROPOSAL (INVENTORY BASIS)

FORM APPROVED OMB NO.
9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO (Check one)	COMPANY
<input type="checkbox"/> A PRIME CONTRACT WITH <input type="checkbox"/> THE GOVERNMENT	<input type="checkbox"/> SUBCONTRACT OR <input type="checkbox"/> PURCHASE ORDER
SUBCONTRACT OR PURCHASE ORDER NO(S).	STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION	CITY AND STATE (Include ZIP Code)
NAME	NAME OF GOVERNMENT AGENCY
ADDRESS (Include ZIP Code)	GOVERNMENT PRIME CONTRACT NO. CONTRACTOR'S REFERENCE NO.
If moneys payable under the contract have been assigned, give the following:	EFFECTIVE DATE OF TERMINATION
NAME OF ASSIGNEE	PROPOSAL NO.
ADDRESS (Include ZIP Code)	CHECK ONE <input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL
SF 1439, SCHEDULE OF ACCOUNTING INFORMATION	<input type="checkbox"/> IS <input type="checkbox"/> IS NOT ATTACHED (If not, explain)

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)	PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)
		PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	INCLUDED IN THIS PROPOSAL (d)	TO BE COMPLETED (Partial termina- tion only) (e)	NOT TO BE COMPLETED (f)	
QUANTITY						
\$						
QUANTITY						
\$						
QUANTITY						
\$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed)		TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
		TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)		
1 METALS					
2 RAW MATERIALS (other than metals)					
3 PURCHASED PARTS					
4 FINISHED COMPONENTS					
5 MISCELLANEOUS INVENTORY					
6 WORK-IN-PROGRESS					
7 SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT					
8 OTHER COSTS (from Schedule B)					
9 GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)					
10 TOTAL (Items 1 to 9 inclusive)					
11 PROFIT (explain in Schedule D)					
12 SETTLEMENT EXPENSES (from Schedule E)					
13 TOTAL (Items 10 to 13 inclusive)					
14 SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)					
15 ACCEPTABLE FINISHED PRODUCT					
16 GROSS PROPOSED SETTLEMENT (Items 13 thru 15)					
17 DISPOSAL AND OTHER CREDITS (from Schedule G)					
18 NET PROPOSED SETTLEMENT (Item 16 less 17)					
19 ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)					
20 NET PAYMENT REQUESTED (Item 18 less 19)					

(When the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE A - ANALYSIS OF INVENTORY COST (Items 4 and 6)

Furnish the following information (unless not reasonably available) for inventories of finished components and work-in-progress included in the proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK-IN-PROGRESS				

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS (Item 8)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES (Item 9)

DETAIL OF EXPENSES	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT (Item 11)

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES (Item 12)			
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)			
NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS (Item 17)			
DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY	

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS (Item 19)

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-8).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

69. Section 53.301-1436 is revised to read as follows:

53.301-1436 Settlement Proposal (Total Cost Basis).

BILLING CODE 6820-JC-M

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

FORM APPROVED OMB NO.
9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (IVRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO (Check one)		COMPANY	
<input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT	<input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER		
SUBCONTRACT OR PURCHASE ORDER NO(S).		STREET ADDRESS	
CONTRACTOR WHO SENT NOTICE OF TERMINATION NAME		CITY AND STATE (Include ZIP Code)	
ADDRESS (Include ZIP Code)		NAME OF GOVERNMENT AGENCY	
If moneys payable under the contract have been assigned, give the following: NAME OF ASSIGNEE		GOVERNMENT PRIME CONTRACT NO.	CONTRACTOR'S REFERENCE NO.
ADDRESS (Include ZIP Code)		EFFECTIVE DATE OF TERMINATION	
SF 1439, SCHEDULE OF ACCOUNTING INFORMATION		PROPOSAL NO.	CHECK ONE <input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL
		IS IS NOT ATTACHED (If not, explain)	

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)	PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)
		ON HAND	PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)	SUBSEQUENTLY COMPLETED AND INVOICED (e)	
QUANTITY						
\$						
QUANTITY						
\$						
QUANTITY						
\$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed)		TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
		TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (e)		
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE (from Schedule A)				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT (SF 1432)				
5	OTHER COSTS (from Schedule B)				
6	GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)				
7	TOTAL COSTS (Items 1 thru 6)				
8	PROFIT (Explain in Schedule D)				
9	TOTAL (Items 7 and 8)				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED =				
11	TOTAL (Item 9 less Item 10)				
12	SETTLEMENT EXPENSES (from Schedule E)				
13	TOTAL (Items 11 and 12)				
14	SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)				
15	GROSS PROPOSED SETTLEMENT (Items 13 thru 14)				
16	DISPOSAL AND OTHER CREDITS (from Schedule G)				
17	NET PROPOSED SETTLEMENT (Item 15 less 16)				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)				
19	NET PAYMENT REQUESTED (Item 18 less 19)				

* Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c) and (d), Section I.

NOTE. - File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE A - INDIRECT FACTORY EXPENSE (Item 3)

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE.- Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS (Item 5)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES (Item 6)

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D -- PROFIT (Item 8)

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES (Item 12)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS (Item 16)

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)
 (Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS (Item 19)

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
NOVEMBER 1989 TO DECEMBER 31, 1989	EXCLUDING TOWARD THE TERMINATION DATE		

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

STANDARD FORM 1436 (REV. 7-89) PAGE 4

70. Section 53.301-1437 is revised to read as follows:

53.301-1437 Settlement Proposal for Cost-Reimbursement Type Contracts.

BILLING CODE 6820-JC-M

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS

FORM APPROVED OMB NO.

9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY		PROPOSAL NUMBER	CHECK ONE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL
STREET ADDRESS		GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE (Include ZIP Code)		EFFECTIVE DATE OF TERMINATION	
ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	\$	\$	\$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COSTS (Items 1 thru 6)	\$	\$	\$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT (Items 7 thru 10)			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT (Item 11 less 12)	\$	\$	\$
14. PRIOR PAYMENTS TO CONTRACTOR	\$	\$	\$
15. NET PAYMENT REQUESTED (Item 13 less 14)	\$	\$	\$

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES: The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES: (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

71. Section 53.301-1438 is revised to read as follows:

53.301-1438 Settlement Proposal (Short Form).

BILLING CODE 6820-JC-M

SETTLEMENT PROPOSAL (SHORT FORM)

FORM APPROVED OMB NO.

5000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

For Use by a Prime Contractor or Subcontractor in Settlement of a Fixed Price Terminated Contract When Total Charges Claimed Are Less Than \$10,000.

THIS PROPOSAL APPLIES TO (Check one)

<input type="checkbox"/> A PRIME CONTRACT	<input type="checkbox"/> SUBCONTRACT OR
<input type="checkbox"/> WITH THE GOVERNMENT	<input type="checkbox"/> PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

COMPANY (Prime or Subcontractor)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

STREET ADDRESS

ADDRESS (Include ZIP Code)

CITY AND STATE (Include ZIP Code)

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

NAME OF GOVERNMENT AGENCY GOVERNMENT PRIME CONTRACT NO.

ADDRESS (Include ZIP Code)

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER	PREVIOUSLY SHIPPED AND INVOICED	FINISHED		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER
		ON HAND	PAYMENT TO BE RECEIVED THROUGH INVOICING	INCLUDED IN THIS PROPOSAL	TO BE COMPLETED (Partial termination only)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)
QUANTITY						
\$						
QUANTITY						
\$						
QUANTITY						
\$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (Include only items allocable to the terminated portion of contract)	AMOUNT OF CHARGE
1	CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING (from SF 1434)	\$
2	CHARGE FOR WORK-IN-PROGRESS, RAW MATERIAL, ETC., ON HAND (from SF 1434)	\$
3	OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES	\$
4	CHARGES FOR SETTLEMENT(S) WITH SUBCONTRACTORS	\$
5	GROSS PROPOSED SETTLEMENT (Sum of Items 1 thru 4)	\$
6	DISPOSAL AND OTHER CREDITS (from SF 1434, Col. 2)	\$
7	NET PROPOSED SETTLEMENT (Item 5 less 6)	\$
8	ADVANCE, PROGRESS, AND PARTIAL PAYMENTS	\$
9	NET PAYMENT REQUESTED (Item 7 less 8)	\$

List your inventory on SF 1434 and attach a copy thereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination.

GIVE A BRIEF EXPLANATION OF HOW YOU ARRIVED AT THE AMOUNTS SHOWN IN ITEMS 3, 4, 6, AND 7

I CERTIFY that the above proposed settlement includes only charges allocable to the terminated portion of the contract or purchase order. That the total charges (Item 5) and the disposal credits (Item 6) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as a basis for reimbursement under a settlement proposals) against agencies of the United States.

NAME OF YOUR COMPANY

BY (Signature of authorized official)

TITLE

DATE

(Where the space provided for any information is insufficient, continue on a separate sheet.)

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereinafter includes a subcontract or a purchase order.

2. Proposals that would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below \$10,000.

3. You should review any aspects of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 49 of the Federal Acquisition Regulation. Your proposal for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under items 2, 3, and 4, the following:

a. COSTS - Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

b. SETTLEMENT WITH SUBCONTRACTORS - Reasonable settlements of proposals of subcontractors allocable to the terminated portion of the subcontract. Copies of such settlements will be attached hereto.

c. SETTLEMENT EXPENSES - Reasonable costs of protecting and preserving termination inventory in your possession and preparing your proposal.

d. PROFIT - A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included for work which has not been done, nor shall profit be included for settlement expenses, or for settlement with subcontractors.

5. If you use this form, your total charges being proposed (line 5), must be less than \$10,000. The Government has the right to examine your books and records relative to this proposal, and if you are a subcontractor your customer must be satisfied with your proposal.

STANDARD FORM 1438 (REV. 7-80) BACK

72. Section 53.301-1439 is revised to read as follows:

53.301-1439 Schedule of Accounting Information.

BILLING CODE 6820-JC-M

SCHEDULE OF ACCOUNTING INFORMATION

FORM APPROVED OMB NO.

9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, including suggestions for reducing this burden. To comment on this collection of information, including suggestions for reducing this burden, to the FAR Secretariat Project (9000-0012), Washington, D.C. 20503.

To be used by prime contractors submitting termination proposals under Part 49 of the Federal Acquisition Regulation. Also suitable for use by subcontractor in effecting subcontract settlements with prime contractor or immediate subcontractor.

THIS PROPOSAL APPLIES TO (Check one)		COMPANY (Prime or Subcontractor)		
<input type="checkbox"/> A PRIME CONTRACT WITH <input type="checkbox"/> THE GOVERNMENT	<input type="checkbox"/> SUBCONTRACT OR <input type="checkbox"/> PURCHASE ORDER	STREET ADDRESS		
SUBCONTRACT OR PURCHASE ORDER NO.(S)				
CONTRACTOR WHO SENT NOTICE OF TERMINATION NAME AND ADDRESS (Include ZIP Code)		CITY AND STATE (Include ZIP Code)		
		NAME OF GOVERNMENT AGENCY		
		GOVERNMENT PRIME CONTRACT NO.	CONTRACTOR'S REFERENCE NO.	EFFECTIVE DATE OF TERMINATION

1. INDIVIDUAL IN YOUR ORGANIZATION FROM WHOM ADDITIONAL INFORMATION MAY BE REQUESTED ON QUESTIONS RELATING TO:

ACCOUNTING MATTERS		PROPERTY DISPOSAL	
NAME	NAME		
TITLE	TELEPHONE NO.	TITLE	TELEPHONE NO.
ADDRESS (Include ZIP Code)		ADDRESS (Include ZIP Code)	

2. ARE THE ACCOUNTS OF THE CONTRACTOR SUBJECT TO REGULAR PERIODIC EXAMINATION BY INDEPENDENT PUBLIC ACCOUNTANTS?

YES NO (Name and address of accountants)

3. INDEPENDENT ACCOUNTANTS, IF ANY, WHO HAVE REVIEWED OR ASSISTED IN THE PREPARATION OF THE ATTACHED PROPOSAL

NAME	ADDRESS (Include ZIP Code)

4. GOVERNMENTAL AGENCY(IES) WHICH HAVE REVIEWED YOUR ACCOUNTS IN CONNECTION WITH
PRIOR SETTLEMENT PROPOSALS DURING THE CURRENT AND PRECEDING FISCAL YEAR

NAME	ADDRESS (Include ZIP Code)

5. HAVE THERE BEEN ANY SIGNIFICANT DEVIATIONS FROM YOUR REGULAR ACCOUNTING PROCEDURES AND POLICIES IN ARRIVING AT THE COSTS
SET FORTH IN THE ATTACHED PROPOSAL? (If "Yes," explain briefly)

YES NO

6. WERE THE DETAILED COST RECORDS USED IN PREPARING THE PROPOSAL CONTROLLED BY AND IN AGREEMENT WITH YOUR GENERAL
BOOKS OF ACCOUNT?

YES NO

7. STATE METHOD OF ACCOUNTING FOR TRADE AND CASH DISCOUNTS EARNED, REBATES, ALLOWANCES, AND VOLUME PRICE ADJUSTMENTS.
ARE SUCH ITEMS EXCLUDED FROM COSTS PROPOSED?

YES NO

(Where the space provided for any information is insufficient, continue on a separate sheet.)

8. STATE METHOD OF RECORDING AND ABSORBING (1) GENERAL ENGINEERING AND GENERAL DEVELOPMENT EXPENSE AND (2) ENGINEERING AND DEVELOPMENT EXPENSE DIRECTLY APPLICABLE TO THE TERMINATED CONTRACT.

9. STATE TYPES AND SOURCE OF MISCELLANEOUS INCOME AND CREDITS AND MANNER OF RECORDING IN THE INCOME OR THE COST ACCOUNTS SUCH AS RENTAL OF YOUR FACILITIES TO OUTSIDE PARTIES, ETC.

10. METHOD OF ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSE.

11. ARE COSTS AND INCOME FROM CHANGE ORDERS SEGREGATED FROM OTHER CONTRACT COSTS AND INCOME? IF "Yes," BY WHAT METHOD?

YES NO

12. METHOD OF COMPUTING PROFIT SHOWN IN THE ATTACHED PROPOSAL AND REASON FOR SELECTING THE METHOD USED. FURNISH ESTIMATE OF AMOUNT OR RATE OF PROFIT IN DOLLARS OR PERCENT ANTICIPATED HAD THE CONTRACT BEEN COMPLETED.

13. ARE SETTLEMENT EXPENSES APPLICABLE TO PREVIOUSLY TERMINATED CONTRACTS EXCLUDED FROM THE ATTACHED PROPOSALS? IF "No," EXPLAIN.

YES NO

14. DOES THIS PROPOSAL INCLUDE CHARGES FOR MAJOR INVENTORY ITEMS AND PROPOSALS OF SUBCONTRACTORS COMMON TO THIS TERMINATED CONTRACT AND OTHER WORK OF THE CONTRACTOR? IF "Yes," EXPLAIN THE METHOD USED IN ALLOCATING AMOUNTS TO THE TERMINATED PORTION OF THIS CONTRACT.

YES NO

15. EXPLAIN BRIEFLY YOUR METHOD OF PRICING INVENTORIES, INDICATING WHETHER MATERIAL HANDLING COST HAS BEEN INCLUDED IN CHARGES FOR MATERIALS.

16. ARE ANY PARTS, MATERIALS, OR FINISHED PRODUCT, KNOWN TO BE DEFECTIVE, INCLUDED IN THE INVENTORIES? IF "Yes," EXPLAIN.

YES NO

(Where the space provided for any information is insufficient, continue on a separate sheet.)

17. WERE INVENTORY QUANTITIES BASED ON A PHYSICAL COUNT AS OF THE DATE OF TERMINATION? (If "NO," explain exceptions.)

YES NO

18. DESCRIBE BRIEFLY THE NATURE OF INDIRECT EXPENSE ITEMS INCLUDED IN INVENTORY COSTS (See Schedule A, SF 1435) AND EXPLAIN YOUR METHOD OF ALLOCATION USED IN PREPARING THIS PROPOSAL, INCLUDING IF PRACTICABLE, THE RATES USED AND THE PERIOD OF TIME UPON WHICH THEY ARE BASED.

19. STATE GENERAL POLICIES RELATING TO DEPRECIATION AND AMORTIZATION OF FIXED ASSETS, BASES, UNDERLYING POLICIES.

20. DO THE COSTS SET FORTH IN THE ATTACHED PROPOSAL INCLUDE PROVISIONS FOR ANY RESERVES OTHER THAN DEPRECIATION RESERVES? (If "Yes," list such reserves)

YES NO

21. STATE POLICY OR PROCEDURE FOR RECORDING AND WRITING OFF STARTING LOAD.

22. STATE POLICIES FOR DISTINGUISHING BETWEEN CHARGES TO CAPITAL (FIXED) ASSET ACCOUNTS AND TO REPAIR AND MAINTENANCE ACCOUNTS.

23. ARE PERISHABLE TOOLS AND MANUFACTURING SUPPLIES CHARGED DIRECTLY TO CONTRACT COSTS OR INCLUDED IN INDIRECT EXPENSES?

(Where the space provided for any information is insufficient, continue on a separate sheet.)

24. HAVE ANY CHARGES FOR SEVERANCE, DISMISSAL, OR SEPARATION PAY BEEN INCLUDED IN THIS PROPOSAL? (If "Yes," furnish brief explanation and estimates of amounts included.)

YES NO

25. STATE POLICIES RELATING TO RECORDING OF OVERTIME SHIFT PREMIUMS AND PRODUCTION BONUSES.

26. DOES CONTRACTOR HAVE A PENSION PLAN? (If "Yes," state method of funding and absorption of past and current pension service costs.)

YES NO

27. IS THIS SETTLEMENT PROPOSAL BASED ON STANDARD COSTS?

YES (If "Yes," has adjustment to actual cost or adjustment for any significant variations been made?) YES NO (If "No," explain)
 NO

28. DOES THIS PROPOSAL INCLUDE ANY ELEMENT OF PROFIT TO THE CONTRACTOR OR RELATED ORGANIZATION, OTHER THAN
(a) PROFIT SET FORTH SEPARATELY IN THE PROPOSAL OR (b) PROFIT INCLUDED IN THE CONTRACT PRICE AT WHICH ACCEPTABLE
FINISHED PRODUCT, IF ANY, IS INCLUDED IN THE PROPOSAL? (If "Yes," explain briefly.)

YES NO

29. WHAT IS LENGTH OF TIME (PRODUCTION CYCLE) REQUIRED TO PRODUCE ONE OF THE END ITEMS FROM THE TIME THE MATERIAL
ENTERS THE PRODUCTION LINE TO THE COMPLETION AS THE FINISHED PRODUCT?

30. STATE POLICY AND PROCEDURE FOR VERIFICATION AND NEGOTIATION OF SETTLEMENTS WITH SUBCONTRACTORS AND VENDORS.

CERTIFICATE

THIS CERTIFIES THAT, TO THE BEST KNOWLEDGE AND BELIEF OF THE UNDERSIGNED, THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

NAME OF CONTRACTOR

BY (Signature of supervisory accounting official)

TITLE

DATE

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1439 (REV. 7-89) PAGE 4

73. Section 53.301-1440 is revised to read as follows:

53.301-1440 Application for partial payment.

BILLING CODE 6820-JC-M

APPLICATION FOR PARTIAL PAYMENT

FORM APPROVED OMB NO.
9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

For use by Prime Contractor or Subcontractor under contracts terminated for the convenience of the Government.

THIS APPLICATION APPLIES TO (Check one)		APPLICANT
<input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT	<input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER	STREET ADDRESS
SUBCONTRACT OR PURCHASE ORDER NUMBER(S)		CITY AND STATE (Include ZIP Code)
CONTRACTOR WHO SENT NOTICE OF TERMINATION NAME		NAME OF GOVERNMENT AGENCY
ADDRESS (Include ZIP Code)		
IF CONTRACTOR HAS GUARANTEED LOANS OR HAS ASSIGNED MONEYS DUE UNDER THE CONTRACT, GIVE THE FOLLOWING:		GOVERNMENT PRIME CONTRACT NUMBER
NAME AND ADDRESS OF FINANCING INSTITUTION (Include ZIP Code)		CONTRACTOR'S REFERENCE NUMBER
NAME AND ADDRESS OF GUARANTOR (Include ZIP Code)		EFFECTIVE DATE OF TERMINATION
NAME AND ADDRESS OF ASSIGNEE (Include ZIP Code)		DATE OF THIS APPLICATION
		AMOUNT REQUESTED
		\$
		APPLICATION NUMBER UNDER THIS TERMINATION

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER	FINISHED		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER	
	PREVIOUSLY SHIPPED AND INVOICED	ON HAND	PAYMENT TO BE RECEIVED THROUGH INVOICING	INCLUDED IN THIS APPLICATION		
(a)	(b)	(c)	(d)	(e)	(f)	(g)
	QUANTITY					
	\$					
	QUANTITY					
	\$					
	QUANTITY					
	\$					

SECTION II - APPLICANT'S OWN TERMINATION CHARGES
(Exclusive of Its Subcontractors' Charges)

NO.	ITEM	SETTLEMENT PROPOSAL
		ATTACHED
1	ACCEPTABLE FURNISHED PRODUCT (at contract price)	\$
2	WORK-IN-PROGRESS	
3	RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES	
4	GENERAL AND ADMINISTRATIVE EXPENSE	
5	TOTAL (Sum of lines 1, 2, 3, and 4)	\$
6	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT	
7	OTHER COSTS	
8	SETTLEMENT EXPENSES	
9	TOTAL (Sum of lines 5, 6, 7, and 8)	\$
10	SUBCONTRACTOR SETTLEMENTS APPROVED BY CONTRACTING OFFICER OR SETTLED UNDER A DELEGATION OF AUTHORITY AND PAID BY APPLICANT	\$
	11. AMOUNTS RECEIVED	
a	UNLIQUIDATED PARTIAL, PROGRESS, AND ADVANCE PAYMENTS RECEIVED	\$
b	DISPOSAL AND OTHER CREDITS	
c	TOTAL (Sum of lines a and b)	
d	AMOUNT OF PARTIAL PAYMENT REQUESTED	
e	TOTAL (Sum of lines c and d)	\$

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Previous edition is obsolete

EXPIRATION DATE 4-30-92

1440-102

STANDARD FORM 1440 (REV. 7-80)
Prescribed by GSA - FAR (48 CFR) 33.240(a)(7)

Reader Aids

Federal Register

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Monday, February 5, 1990

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	\$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	¹ Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
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1200-End, 6 (6 Reserved).....	13.00	Jan. 1, 1989
7 Parts:		
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52.....	23.00	² Jan. 1, 1988
53-209.....	18.00	Jan. 1, 1989
210-299.....	24.00	Jan. 1, 1989
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1120-1199.....	11.00	Jan. 1, 1989
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1500-1899.....	10.00	Jan. 1, 1989
1900-1939.....	11.00	Jan. 1, 1989
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9 Parts:		
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16 Parts:		
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200-239.....	16.00	Apr. 1, 1989
240-End.....	22.00	Apr. 1, 1989
18 Parts:		
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280-399.....	14.00	Apr. 1, 1989
400-End.....	9.50	Apr. 1, 1989
19 Parts:		
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200-End.....	9.50	Apr. 1, 1989
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40 Parts:			49 Parts:		
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² No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

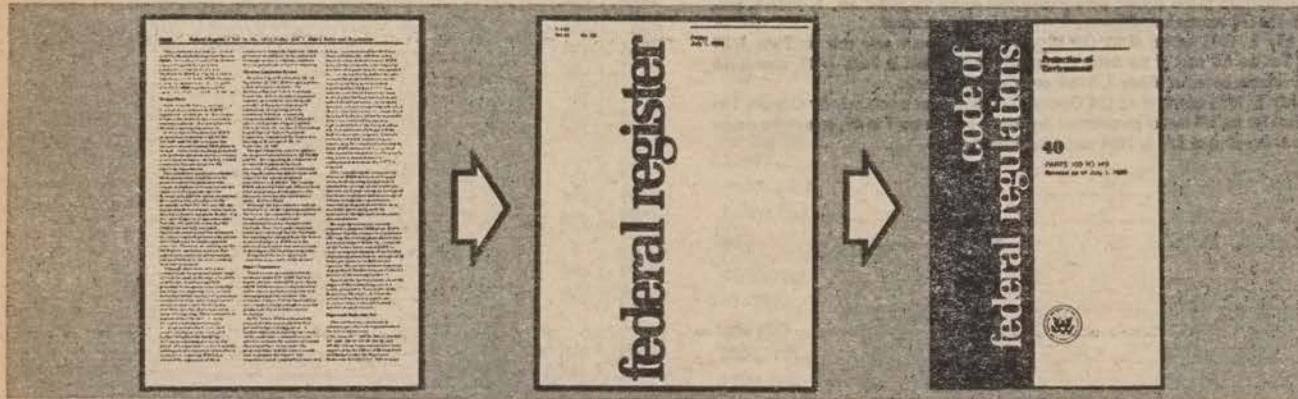
³ No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁵ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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